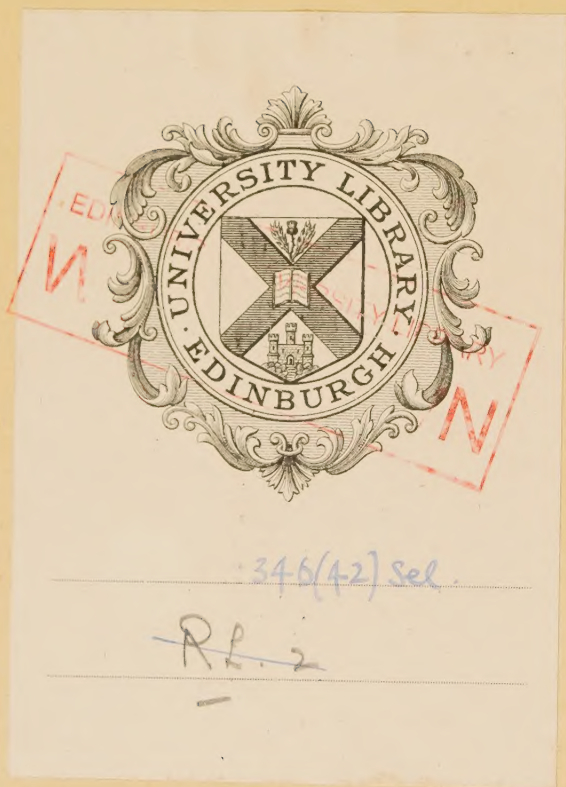




EDINBURGH UNIVERSITY LIBRARY



30150

007267823



Digitized by the Internet Archive
in 2025

https://archive.org/details/bwb_KV-746-689

THE
PUBLICATIONS
OF THE
Selden Society

περὶ παντὸς τὴν ἐλευθερίαν

VOLUME XXXI
FOR THE YEAR 1915

Selden Society

FOUNDED 1887

TO ENCOURAGE THE STUDY AND ADVANCE THE KNOWLEDGE
OF THE HISTORY OF ENGLISH LAW.

Patron :

HIS MAJESTY THE KING.

President :

THE RIGHT HON. VISCOUNT HALDANE, K.T.

Vice-Presidents :

THE RIGHT HON. LORD JUSTICE WARRINGTON.

THE RIGHT HON. LORD PARKER.

Council :

MR. SIDNEY O. ADDY.	HIS HONOUR JUDGE LOCK.
MR. W. PALEY BAILDON, F.S.A.	THE RIGHT HON. LORD MOULTON.
DR. EDWIN FRESHFIELD.	MR. R. F. NORTON, K.C.
SIR CHARLES CHADWYCK HEALEY, K.C.B., K.C.	MR. WALTER CHARLES RENSHAW, K.C.
MR. BOYDELL HOUGHTON.	THE RIGHT HON. SIR ROBERT ROMER, G.C.B.
SIR HENRY J. JOHNSON.	MR. T. CYPRIAN WILLIAMS.
THE HON. MR. JUSTICE JOYCE.	MR. JAMES G. WOOD.
PROFESSOR COURTNEY S. KENNY.	

Literary Directors :

THE RIGHT HON. SIR FREDERICK POLLOCK, Bart. (13 Old Square, Lincoln's Inn).

PROFESSOR VINOGRADOFF (Court Place, Ifley, Oxford).

Honorary Auditors :

MR. J. W. CLARK, K.C. MR. HUBERT HALL.

Secretary :

MR. H. STUART MOORE (6 King's Bench Walk, Temple, London).

Honorary Treasurer :

MR. J. E. W. RIDER (8 New Square, Lincoln's Inn, London).

Hon. Secretary and Treasurer for the United States :

MR. RICHARD W. HALE (16 Central Street, Boston, Mass.).

The Pear Books Series.

NO. 1112 1912 1912 1912

VOL. XI.

PRINTED BY
SPOTTISWOODE AND CO. LTD., LONDON
COLCHESTER AND ETON
121 107

Selden Society

YEAR BOOKS OF EDWARD II.

VOL. XI.

5 EDWARD II.

A.D. 1311-1312

EDITED
FOR THE SELDEN SOCIETY

BY

WILLIAM CRADDOCK BOLLAND

OF LINCOLN'S INN AND THE NORTH-EASTERN CIRCUIT, BARRISTER-AT-LAW

He [Serjeant Maynard] had such a relish of the old year books that he carried one in his coach to divert him in travel, and said he chose it before any comedy.

ROGER NORTE

C'est toute la tragédie, toute la comédie humaine que met en scène sous nos yeux l'histoire de nos lois. Ne craignons point de le dire et de le montrer.

ALBERT SOREL

LONDON

BERNARD QUARITCH, 11 GRAFTON STREET, W.

1915

All rights reserved



CONTENTS



LIST OF MANUSCRIPTS	x
-------------------------------	---

INTRODUCTION—

1. Of the Terms in which Particular Cases were heard	xi
2. Of some of the Cases reported in this Volume	xiii
3. Of some Irregularities in the Procedure of the Court	xli
4. Of the Apprentices	xlii
5. Of some Particular Words occurring in the Reports included in this Volume	xliii
6. Of some Blunders in the Reports	xlvi
7. Of some Miscellaneous Matters	xlvi

LEGAL CALENDAR, 5 EDWARD II	1
---------------------------------------	---

YEAR BOOKS

HILARY TERM, 5 EDWARD II	1
EASTER TERM, 5 EDWARD II	174
CONCORDANCE OF THIS EDITION WITH THE OLD EDITION	225
CONCORDANCE OF THIS EDITION WITH FITZHERBERT'S ABRIDGEMENT	226
TABLE OF STATUTES	227
TABLE OF THE FORMS OF ACTION	228
TABLE OF CASES	229

INDEX OF MATTERS	242
INDEX OF PERSONS	250
INDEX OF PLACES	256

LIST OF MANUSCRIPTS

- B = British Museum, Additional MS. 35094
C = British Museum, Additional MS. 37658
D = Lincoln's Inn, Hale MS. 139
G = Cambridge University Library, Gg. 5, 20
L = British Museum, Additional MS. 25183
M = Cambridge University Library, Ff. 2, 12
P = British Museum, Harleian MS. 835
Q = British Museum, Hargrave MS. 210
R = Cambridge University Library, Dd. 9, 64
T = British Museum, Harleian MS. 3639
X = Bodleian Library, Tanner MS. 13
Y = British Museum, Additional MS. 35116
Z = Lincoln's Inn, Hale MS. 137 (2)

INTRODUCTION



TABLE OF THE MATTERS.

1. Of the Terms in which Particular Cases were heard.
2. Of some of the Cases reported in this Volume.
3. Of some Irregularities in the Procedure of the Court.
4. Of the Apprentices.
5. Of some Particular Words occurring in the Reports included in this Volume
6. Of some Blunders in the Reports.
7. Of some Miscellaneous Matters.

1. OF THE TERMS IN WHICH PARTICULAR CASES WERE HEARD.

THIS volume contains reports of cases tried, according to our manuscript authorities, in the Hilary and Easter terms of 5 Edward II.¹ And here, at the outset, it may be said that the manuscript Year Books are far from being certain guides as to the term, or even the year, in which a case was actually tried. A particular case will be ascribed in one manuscript to one term, and in another to another term, or even to another year. For instance, the manuscript we call D assigns no cases at all to the Trinity term of this year, but includes all cases of that term with those of the following term under the heading of 'Easter.' Consequently, unless the record of a case can be found and identified it is impossible to say with any certainty to what particular term or year it should really be assigned. And it may very well be that when the records of reported cases have not been found the reason of the failure to find them lies in the fact that the cases are wrongly assigned in the Year Books. But there is ample excuse for the compilers of the Year Books, for even when we have the record

¹ Only about half of the reports present volume. The other half will for the Easter term are included in the appear in the next succeeding one.

of a case before us it is difficult, perhaps impossible, to say to what particular term and year it should be assigned. The practice of the recording clerks seems to have been to commence their record when one of the parties to the action came into Court, and to record what was then done. A blank space was then left on the Roll sufficient, in the clerk's opinion, to contain the record of all the future proceedings in the same case up to trial and judgment. Then, term after term, it may be, or at longer intervals, continuances are entered on the Roll; though sometimes we are sure that some that should have been entered have been omitted. Often, very often, much if not all of the space left blank is never written upon and has remained blank up to to-day. Sometimes, but not often, the space originally left blank has not proved to be sufficient to contain all that had subsequently to be recorded, and a flap of parchment is stitched on to the Roll to receive that which cannot be got into the space originally left blank. Take, for instance, the case of *Marston v. Walraund* printed on pp. 70-71 of this volume. It is recorded in the Roll for the Hilary term of 5 Edward II. The first formal proceedings began in that term, but there was adjournment after adjournment, and the actual trial of the facts in issue did not take place till Lent of the sixteenth year, the judgment being given in the following Easter term. To what term of what year should this action really be assigned? The manuscript Year Book and the Roll assign it to the Hilary term of 5 Edward II, and it is consequently assigned to that term in the present volume. But need we have been surprised if the reporter—we have only one report of the case—had assigned it to the year when the facts were actually tried? If he had done so, it is almost certain that the record would never have been identified. And for some such reason as this it is probable that some almost certainly existing records have not been found.

The case of *Pomeray v. Raleye* (p. 174) is perhaps even more puzzling in its chronology than *Marston v. Walraund*; for here the enrolling clerk seems to be in conspiracy with the reporters to lead us into confusion. Seven of our manuscripts report this case. Four of them assign it to the Hilary term of the fourth year¹ and three of them to the Easter term of the fifth year.² These seven reports all deal with the same question, the validity of the writ; and some of them tell us, what the record does not tell us, that the writ was ruled good. All seven are clearly reports of one and the same argument, and, in the main, refer to one and the same hearing. The roll of the Hilary term of the fourth year records this argument and tells us that judgment

¹ For these four reports see *Year Books Series*, Vol. VI, p. 65.

² For these three reports see p. 174 of the present volume.

was reserved.¹ There that particular record ends. No continuance is added. From the roll of the Easter term of the fifth year² we should suppose that the action first came on for hearing in that term. This latter record says nothing of any argument about the validity of the writ, but gives the purport of it exactly as the earlier roll does, and then tells us that the defendants vouched to warranty and that the voucher was allowed. And then the curtain falls again. At some time between the date of the first record and that of the second, judgment must have been given in favour of the writ; and we should have expected to find this judgment and the subsequent proceedings recorded by way of continuances in the earlier roll. Anyone who has seen the earlier roll and not the later one will assign the case without hesitation to the Hilary term of the fourth year. Anyone who has seen the later roll and not the earlier one will assign it with as little hesitation to the Easter term of the fifth year. One who has seen both rolls states the facts, and goes no further. Two of the three reports included in the present volume tell us that the writ was ruled good. One of them tells us that the defendants vouched to warranty and that the voucher was allowed. One tells us that the defendants vouched, without specifically saying that the voucher was allowed. The reporters who tell us that the writ was ruled good must, therefore, have been present at a hearing of which no record has been found.

Just one other instance from the reports contained in this volume may be given. The anonymous case, No. 43 (pp. 159–162), is included on the authority of five manuscripts. What is clearly the same case is included in the first volume of the *Year Books Series* on the authority of two manuscripts, which assign it to 2 Edward II. The second version of the report in the present volume is almost word for word identical with the report as given in the first volume of the series. Maitland was unable to find the record, and I have been as unsuccessful. It may be said here that Fitzherbert notes the case,³ and assigns it to the Michaelmas term of 2 Edward II. Coke cites it from Fitzherbert, and condemns it. ‘*Non est lex,*’ he says, ‘*quia nullus est haeres viventis.*’⁴

2. OF SOME OF THE CASES REPORTED IN THIS VOLUME.

The forms of action of which we have examples in the following pages are *Account*, *Ael*, *Annuity*, *Conspiracy*, *Cosinage*, *Covenant*, *Darrein Presentment*, *Debt*, *Detinue*, *Dower*, *Ejectment from Wardship*, *Entry*, *Formedon*, *Illegal Distress*, *Intrusion*, *Mesne*, *Monstrauerunt*,

¹ See *Year Books Series*, Vol. VI, p. 65.

² See p. 176 of the present volume.

³ *Resceit*, 147, f. 98d.

⁴ 2 Inst. 345.

Ne Vexes, Novel Disseisin, Nuisance, Per que seruicia, Quare impedit, Quare vi et armis, Replevin, Scire Facias, Trespass and Utrum. Some observations on points of special difficulty or of special interest in the reports may be helpful to the student. Though all our reports are, of course, reports of cases heard in the lay courts, yet there are several dealing with ecclesiastical matters and ecclesiastical interests, and of these we will speak first.

In *Champion v. Havering, Leek and Stretton* (p. 27) we have a curious story told us for which I cannot find any basis of fact. The principal defendant is John of Leek, Archbishop of Dublin. The action is to recover the right to present a vicar to the chapel of Stretton in Lincolnshire. The Archbishop's defence is that the chapel of Stretton is annexed to the Deanery of Penkridge in the same county, and that the Deanery of Penkridge is an appurtenance of the Archbishopric of Dublin, if the Archbishop for the time being be an Englishman speaking the English tongue; and he further adds that such Archbishops have the Deanery by the collation of the King, a collation which, in the case of an English Archbishop, cannot be refused. If the Archbishop should not be an Englishman, then the King presents to the Deanery as to his free chapel. And this right to the Deanery, we are told and have recorded on the Plea Roll, the English Archbishops of Dublin have had and enjoyed from a time higher than memory. I have taken considerable pains in investigating this interesting story, but I cannot discover that there is a word of truth in it. I may go further and say that the existing evidence disproves it. We need not go back in the history of the Deanery of Penkridge further than King John's time. By his charter dated the thirteenth day of September in the seventeenth year of his reign (1215) John gave the advowson of the church of Penkridge to the then Archbishop and his successors for ever¹; and he gave it absolutely, without any condition that the Archbishops should be Englishmen or

¹ A transcript of this charter, copied from the *Black Book* in the Archbishop's Registry at Dublin, can be found in Dr. Robert Plot's *Natural History of Staffordshire* (1686), together with other information in respect of Penkridge. Dugdale's *Monasticon*, vol. vi. p. 1466, may also be consulted. The operative words of the charter, so far as the Deanery of Penkridge is concerned, are: 'Preterea concessimus de dono nostro intuitu Dei et pro salute anime nostre et antecessorum et successorum nostrorum regum Anglie dicto Archiepiscopo Dublinensi et successoribus suis aduocationem Ecclesie de

Pencriz cum pertinenciis in perpetuum. Ita quod cum dicta Ecclesia vacare contigerit dictus Archiepiscopus et successores sui eam cum pertinenciis pro voluntate sua possint ordinare. Quare volumus et firmiter precipimus quod predictus Henricus Dublinensis Archiepiscopus et successores sui habeant et teneant predictas terras et tenementa et aduocationem dicte Ecclesie cum omnibus pertinenciis suis bene et in pace libere et quiete integre et plenarie cum omnibus libertatibus et liberis consuetudinibus ad predictas terras et tenementa et predictam aduocationem pertinentibus.'

should have it by collation from himself. In 1257 Pope Alexander IV confirmed the gift, according to the tenor of King John's charter, to the Archbishopric of Dublin.¹ It will be observed that what the Archbishops of Dublin have got so far is the advowson of the church of Penkrige, the right to appoint a Dean, but not the actual office of Dean. From another letter of Pope Alexander IV,² written in 1259, we learn that though all the prebends established in the church of Penkrige were endowed, no endowment existed for the payment of a Dean. But though there was no income for the Dean, there was some valuable patronage. There were thirteen prebends³ in the church of Penkrige, and to these the Dean, when there was one, appointed. But, there being no Dean, the Archbishops themselves had for these last 'forty years and more' appointed to them. This was irregular, and, to cure the irregularity, the Pope was asked to grant and annex the Deanery with all its privileges to the Archbishopric. Alexander IV found no difficulty in doing this, and united the Deanery with the Archbishopric for ever.⁴ This then was the position of affairs in the fifth year of Edward II. John of Leek, as Archbishop of Dublin, is Dean of Penkrige, and he is Dean in absolute right of his Archbishopric. He needs no collation by the King, and still less, if possible, does he need to prove himself an Englishman. As the jury found against him we may perhaps suppose that he was conscious of some weakness in his case and wished to delay a decision as long as possible. An allegation that he held the Deanery by the collation of the King was a possible means of obtaining delay, for it would entitle him to have aid of the King. But this collation by the King must be proved. BEREฟอร์ด C.J. will not accept the Archbishop's unsupported statement that 'all our predecessors, being English Archbishops of Dublin, have had the Deanery by the collation of Kings.' 'What have you got in proof of the King's collation?' he wants to know; and tells him that he will get no aid from the King unless he shows a deed by the King. Of course he has no deed to show, for no King had ever collated either him or any of his predecessors; and if any King had proposed to do so we may be sure that the Archbishop would have been the first person to tell him that he held the Deanery of his own right as Archbishop and needed no collation. But

¹ *Crede Mihi* ('the most ancient Register Book of the Archbishops of Dublin'), p. 13.

² *Ibid.* p. 16.

³ At any rate in 26 Henry VIII.

⁴ 'Nos itaque tuis supplicationibus inclinati dictum decanatum cum omnibus libertatibus immunitatibus et

iuribus suis tibi et per te prefato archiepiscopatu pleno iure imperpetuum concedimus et unimus ita quod nullus in eo decetero instituatur decanus sed tu ac successores tui decanatus ibidem fungamini per omnia et in omnibus dignitate.'
—*Crede Mihi*, p. 16.

what was the genesis of the rest of the Archbishop's story, that it was only when the Archbishop was an Englishman speaking English that he had the Deanery by right, and that in other cases it was in the free gift of the King? There must have been some basis of fact, one would suppose, for such a story, but I can find neither support for it nor trace of it outside the reports and the record of this case.

After the Council of Merton and the declaration thereof of the Barons that they would not have the laws of England changed and brought into accordance with the Canon Law, by which children born out of wedlock were legitimated by the subsequent marriage of their parents, the lay courts, by refusing to allow the issue of legitimacy to be directly raised, an issue which must have gone to the spiritual court, which administered the Canon Law, and by taking the verdict of a lay jury on the question of fact whether the child was born before or after its parents' marriage, provided that the Common Law should not be over-ridden by the Canon Law. In the case of *Thornsett v. Whaite* (p. 38) an effort is made by the defendant's counsel to oust the spiritual courts from their jurisdiction in yet another class of cases. It is a writ of dower. The claimant seeks dower in right of her marriage. The ordinary plea by which the defendant in such a case raised the material issue was by offering to aver that the claimant was 'not joined to him in loyal matrimony.' Upon this issue the question was as a matter of course referred for decision to the spiritual court. The spiritual court, administering the Canon Law, looked upon betrothal as all one with formal marriage, and would, consequently, certify that a man and woman who had been betrothed, and betrothed only, were 'joined in loyal matrimony'; and the lay court would have to accept the certificate and award the woman dower. In *Thornsett v. Whaite* the attempt was made, by a slight alteration in the form of the regular plea, to retain the decision of the issue for the lay court. Reading the report in the light of the record we seem to gather that the woman claiming dower had been betrothed to the man she described as her husband, but had never been fully and formally married to him. Counsel for the defendant offered to aver that the claimant was never married to the man of whose inheritance she claimed dower. This seems a straightforward issue of fact, as capable of determination by a lay jury as the fact of the birth of a child before or after the marriage of its parents. The woman's counsel, indeed, seems to admit that such a plea would be within the jurisdiction of the lay court. He does not argue the point. He objects to the plea just because it removes the issue from the jurisdiction of the spiritual court. The defendant's counsel points out what the result of a reference to the spiritual court will be. The claimant is entitled to dower only if

she were married. She never was married, but the spiritual court will hold that betrothal is equivalent to 'loyal matrimony'; and so the lay Court will have to give her dower, and that will not be justice. But BEREฟอร์ด C.J. is a man of conservative temperament. He admits that Court Christian holds betrothal and marriage as all one; but it is ancient law, he says, and a custom observed by learned men of long ago that in such case as this the Court Christian hath jurisdiction, 'and we are not careful to depart from such usage.' It could not be said to be a question of the prevalence of the Canon Law over the Common Law of England, and there were no shouts of Merton Barons to stiffen his back. And so, the plea of the defendant being refused, no other course was open to him than to join issue on the plaintiff's plea of 'joined to him in loyal matrimony.' The issue is thereupon, as a matter of course, referred to the Bishop of Lincoln for decision, and he duly certifies that the man and woman were joined in loyal matrimony; and so the claimant gets her dower, and for the defendant there is *duresse*.

It is worth while noting here that in 21 Edward I the fact of a man's legitimacy was found by a jury in a lay court—the Common Bench—on this very ground, *i.e.* that he was born before the marriage of his parents but after their betrothal. This man, the jury said, had entered on his heritage as his father's eldest son and heir. 'ROUBERY J. How do you say that he was next heir? *The Assize*. For the reason that he was born and begotten of the same father and mother, and that his father on his deathbed acknowledged him to be his son and heir. ROUBERY J. You shall tell us in different fashion from that how he was next heir, or here you will stay under lock and key without food or drink till to-morrow. And then the Assize said that the man was born before the solemnity of marriage but after the betrothal.'¹ And the Court accepted this, and no one thought in 21 Edward I of contesting the legitimacy of a man born in the circumstances found by the jury.

The point in the case of *The King v. The Archbishop of York* (p. 57) was whether a vicarage was a temporality or a spirituality. It is difficult to understand how in 5 Edward II it was possible to argue this question at the length it appears to have been argued. In the first place, Henry II had long ago laid down in his Assize of Darrein

¹ *Le Assise* . . . William entra cum fiz et hyr moryz et eyne et cum plus prochein heyr. *Roubury*. Coment dytes vus ke yl est plus prochein heyr. *Lassise*. Par la resone ke yl est nee et engendre de meyme le pere et de meyme la mere et ke sun pere en sun mal moriant reconut ke yl fut sun fiz et sun heyr.

Rouebury. Vous nus dirrez en vn autre manere coment yl est plus prochein heyr ou vus demorrez sanz manger et beyre iekes demeyn matyn enclos. Et pus dyseyent ke yl naquit deuant la solempnete et de deins la fiance done. — *Year Books* 21 & 22 Edward I (Rolls Series), p. 273.

Presentment that advowsons of parsonages were temporalities, and that the lay courts only had jurisdiction in actions concerning them. Of this important Assize we possess only some fragments preserved for us by Glanville. Historians have assumed that its provisions covered all advowsons,¹ but reference to the actual words of the writs given by Glanville shows that these refer only to the advowsons of parsonages, *advocationes ecclesiarum*. It was chapter V of the Statute of Westminster II that gave completion to what Maitland has called 'the true Magna Carta of the liberties of the Church of England'² by enacting that in future writs are to issue in respect of advowsons of vicarages, as well as of some other advowsons, such writs not having been previously allowed.³ And the inference to be drawn from the context of the Statute is plainly that the writs contemplated were writs of *quare impedit* and *darrein presentment*. If advowsons of parsonages were to be accounted temporalities by virtue of Henry II's Assize, surely the advowsons of vicarages must have become temporalities by virtue of the Statute of Westminster II. Yet it is noteworthy that neither the counsel for the King in their argument nor BEREFOED C.J. in his judgment seem to have relied upon, nor even to have noticed, the plain words of this Statute. The Chief Justice reasons that since advowsons of parsonages are temporalities and since the advowson of a vicarage is parcel of the advowson of a parsonage, and since parcels partake of the nature of their gross, therefore the advowson of a vicarage is a temporality. The argument seems good enough, and the Court certainly acted upon it; but we should have expected to find the question settled more promptly by a direct reference to the Statute of Westminster II. The Bishop of Durham was, in right of his bishopric, the patron of the vicarage of Norton, a village near Stockton-on-Tees. The see of Durham became vacant through the death of Bishop Anthony of Bec. The King, consequently, became possessed of the guardianship of the temporalities of the diocese, and the Archbishop of York, as Metropolitan, of the spiritualities. During this time there was a vacancy in the vicarage of Norton. The Archbishop, holding that the advowson of a vicarage was a pure spirituality—*quoddam mere spirituale*—appointed a clerk to the vicarage. Thereupon the King, claiming that advowsons of vicarages as well as of parsonages were temporalities—*aduocationes*

¹ E.g. Bishop Stubbs, in speaking of this Assize, says that it 'removed all questions of advowsons and presentations from the ecclesiastical courts.' *Lectures on the Study of Mediaeval and Modern History* (3rd edition), p. 350.

² *Canon Law in the Church of*

England, p. 63.

³ 'Et de cetero concedantur breuia de capellis prebendis vicariis hospitalibus abbatibus prioratibus et aliis domibus que sunt de aduocationibus aliquorum que prius concedi non consueuerunt.'

tam Vicariarum quam Rectoriarum sunt Laicale etc.—brought his writ of *quod permittat* against the Archbishop. There was a preliminary discussion on the question whether the Justices of the Bench had any jurisdiction to try the action, seeing that Norton was within the franchise of the Bishop of Durham, wherein every plea arising within the franchise ought to be pleaded. But this by-issue we need not discuss here. It is sufficient to say that the King's right to plead in his own Court was upheld. The case presented on behalf of the Archbishop consisted of little more than the unproved and unsupported assertion that the advowson of a vicarage was a spirituality, and that, consequently, the Metropolitan as guardian of the spiritualities *sede vacante* was entitled to present. It was also alleged that Archbishops for the time being had previously appointed clerks to this same vicarage in like circumstances, but no proof of this was offered. After some further and more or less irrelevant observations by the Archbishop's counsel, BEREFORD C.J. intimated that the Court would have had no difficulty in giving immediate judgment if the defendant had been any other than the Metropolitan. Exactly where his difficulty lay is not obvious, but as he seems to have laid some stress upon the fact that the Bishop of Durham was entitled to fill the vacant vicarage as actual patron in right of his bishopric, and that the right did not accrue to him in his capacity of Ordinary, *per lapsum temporis*, while indications of arguments based upon the latter supposition crop up here and there in the reports, we may perhaps find in these some cause for his short-lived hesitation. It is said, for instance, that when tithe-corn comes into the hand of the parson it becomes a spirituality, the inference to be drawn being, apparently, that, allowing the advowson of a vicarage to be a temporality in the hands of the actual patron, yet, when it comes into the hands of a spiritual person, such as the Ordinary, in his spiritual capacity, it, like the corn, changes its nature from lay to spiritual. But whatever the Chief Justice's difficulty was, it was completely overcome upon reflection, and the Court, holding that the Archbishop had shown them no reason why the advowson of the vicarage should be a spirituality, while the advowson of the parsonage, of which it was parcel, was a temporality, gave judgment in the King's favour.

The actual facts in *Marston v. Walraund* (p. 70) call for no comment, but the case must not pass altogether unnoticed. In form it was an assize of *utrum*, though in the report it is called a jury of *utrum*, as such an assize always was called after the later years of Edward I. Any of the other three assizes, if side issues of fact cropped up, might be turned into a jury—the phrase *assisa vertitur in iuratum* is common

enough—for the determination of such facts; but what in the other assizes might be considered exceptional was in the assize of *utrum* so general that the assize of twelve men came to be regarded and treated as a *iurata* with power to deal with any issue of fact which might be raised.¹ But the record of *Marston v. Walraund* shows us that though this form of action was no longer called an assize but a jury, it was yet not forgotten that it really was an assize, for the entry in the Roll commences *Iurata venit recognitura*, and the form *venit recognitura* is the form which we always find in the record of the proceedings before an assize and never in the record of those before an ordinary jury. The record of *Marston v. Walraund* presents some points of difficulty as to the course of the proceedings. It is contained in the ordinary De Banco Plea Roll of the Hilary term of 5 Edward II, and the hearing apparently commenced 'here,' i.e. at Westminster. The plaintiff opened his case and claimed certain land, some ten acres, as land held in free alms by his church. The tenants of the land, John Walraund and his wife Joan, said it was their own lay fee, of which they had been enfeoffed in fee tail by John of Stamford, Joan's father, who had bound himself and his heirs to warranty. John of Stamford was dead, and Joan was his heir. Joan, therefore, was bound to warranty. The tenants, or defendants, vouch her, and of course in such voucher her husband must be joined with her; that is to say, the defendants vouch themselves to warrant themselves of their right to the land in dispute. Their right to do this in the circumstances is contested by the claimant, but is allowed by the Court. The object of the voucher was stated to be to enable Joan, in the event of it being found that the land in dispute was in fact the free alms of the claimant's church, to recover land of equal value from her father's estate. As Joan was her father's heir it is not obvious how she was really going to advantage herself by assigning to herself some other land, of which we may suppose she was already, as her father's heir, in possession, in place of the land which she might have to yield to the claimant; unless, indeed, it might be at the expense of her mother—if her mother were still alive—by diminishing the dower to which she was entitled. Possibly the plea was only a dilatory one, and if delay only were the purpose of it, then, as we shall see, it was eminently successful. The voucher having been allowed by the Court, the hearing is adjourned to enable the

¹ For an interesting and valuable dissertation by Mr. L. O. Pike on the *iure de utrum* dealing, *inter alia*, with the strange blunder, of which, apparently, Fitzherbert was the first

begetter, of calling this assize or jury a *iuris utrum*, see *Year Books of 20 Edward III* (Rolls Series) pt. II, pp. xxiii–xxvii.

defendants to be summoned formally in their own county of Devonshire, and the summons is made returnable in the quindenies of Trinity, *i.e.* two terms later, and the Sheriff is charged to have the jurors in Court at that time. For some reason or other of which we are told nothing the parties do not appear again until the quindenies of St. Martin, that is to say in the Michaelmas term of 6 Edward II. John of Marston and his wife then appear in the double capacity of tenants and warrantors, and in the latter capacity warrant themselves in the former one. Then the hearing is again adjourned until the following Easter term—these successive adjournments have now held up the hearing for a year—and again the Sheriff is charged that he have the jurors ready in Court. At the time assigned the parties again come into Court. The claimant again says that the land in demand is the free alms of his church. The defendants again say that it is their own lay fee, and of this they put themselves on the jury. John the parson accepts this issue, and the Court directs that it shall be tried by the jury. But there is not a single juror in Court—they had perhaps got tired of making the long journey from Devonshire so many times to no purpose—and so the hearing had perforce to be again adjourned, this time over another Long Vacation, until a fortnight after Michaelmas. It is a year and a half since the hearing commenced, and nothing has yet been done except to formulate the issue which the jury is to try, and now, when an issue is at last formulated, there is no jury there to try it. Not a juror came, says the record. Then comes a long gap in the story, and again there is no explanation of it. From what follows in the record we may perhaps conclude, though we cannot be sure of it, that John of Stonore, who was then a Justice of the Common Bench, was assigned to try the issues at Exeter, and that, as the custom was, a local knight, Stephen of Hacombe, was associated with him. It is very unlikely that the trial at Exeter was at *nisi prius*. There is nothing in the record to support such a supposition; and it is equally improbable that Stonore and Hacombe were justices to take assizes. The fact that Stonore returned the finding of the jury to the Justices of the Bench, then sitting at York, is almost certain proof that he and his associate were merely trying local issues locally, and that their powers extended only to the trial of those issues; judgment upon the findings of the jury being left to the full court. Possibly the reason of the long delay in the trial of the issues was the continued difficulty of getting the jurors back again from Devonshire to Westminster. Perhaps when the practical impossibility of this was at last realised, an order, which cannot now be traced, was made for the trial of the issues locally. John of Stonore reports this finding to the Justices,

who were then sitting at York,¹ and judgment is given that John the parson recover his seisin. And because Joan's warranty to which she was bound by her father had failed, the same John Walraund and Joan his wife are to have of the land of the aforesaid John and Joan to the value of the land they have lost through the failure of the warranty; and they are also to be in mercy. But why should not John the parson have been put into mercy also, for claiming five acres of land of which the jury found that he was already seised?

A short review of the arguments in the case of *Manby v. Hay and Bedwyn* (p. 192) may be helpful, as the reports are not very lucid. And, first of all, we may dismiss the co-defendant Walter of Bedwyn. He was only joined because he happened to be parson of the church of Aughton, and had no real concern with the matter at issue. It seems to have been allowed by both sides that at some time the church of Thorganby was a parish church, the advowson of which was appendant to the Manor of Thorganby. The plaintiff's case was that at the time of the last preceding vacancy of Thorganby one Hubert of Vaux held the manor of Thorganby and presented to the church of Thorganby, as to a parish church, in right of his manor. Hubert died, and the manor descended from heir to heir until it came into the possession of one Thomas. This Thomas enfeoffed the plaintiff, Ralph of Manby, of the manor and its appurtenances; and in right of this enfeoffment Ralph claims to have the right to present a parson to fill the present vacancy, and he brings his writ of *quare impedit* against Roger of the Haye, who contests that claim. Roger's case is that, though the church at Thorganby was once an independent parish church, it had ceased to be such before the time of the Thomas who enfeoffed the plaintiff of the manor, and had been converted into a chapel-of-ease, and, as such, annexed to the parish church of Aughton, of which the defendant was patron. The defendant begins by challenging the writ for the reason that it describes as a church what is, in fact, a chapel. But as he gives no immediate proof of this, the Court is disinclined to allow him, on his own unsupported assertion, to oust the plaintiff from his claim. The defendant then changes his ground, and challenges the writ for other reasons. The plaintiff, he says, is a strange purchaser of the manor, and cannot deny that this so-called church was in the time of his feoffor, at any rate, a chapel. If he had been of the blood of Hubert, then, possibly, the writ of *darrein presentment* would have been open to him; but, being a strange purchaser, he could derive from the enfeoffment by Thomas no further

¹ The Court of Common Pleas was then sitting at York by the King's order. See *Calendar of Close Rolls* 15 Edward II, p. 417.

right than Thomas himself had possessed. Thomas had never possessed the right to present to Thorganby, and therefore could not grant any such right to the plaintiff. And for this reason the defendant now challenges the writ. Again the argument is not acceptable to the Court. BEREฟอร์ด C.J. says that this line of pleading goes to ousting the plaintiff from his *quare impedit* and giving the *darrein presentment* to his feoffor.¹ 'We cannot accept that.' To have accepted it and abated the writ would have left the real issue undecided. On the other hand, Ralph, the plaintiff, now offers to aver that Hubert, the ancestor of his feoffor, did actually present to Thorganby as to a parish church. The defendant retorts that this is not to the point. Whatever the status of the church might have been in Hubert's time, it was, he says, only a chapel in Thomas's time; and the plaintiff can go back no further than the time of this Thomas from whom he derives any right that he may possess; and for this reason he asks that the plaintiff shall not be admitted to make his proposed averment. The Court takes time to consider its judgment, and the parties are adjourned to the following term. When the hearing is resumed, the defendant has apparently dropped his objection to the plaintiff's averment, and proposes to meet it by one of his own to the effect that long before the alleged presentation by Hubert the so-called church of Thorganby was held to be a chapel and not a church. The plaintiff thereupon tenders as an issue for a jury the plea that 'the aforesaid Hubert did present the aforesaid Thomas, his clerk, to the aforesaid church, as to a church.' And now the proceedings are suddenly broken up by the appearance in court of one Thomas of Pontefract, who doth make *profert* of certain letters patent of the Vicar-General of the Archbishop of York informing all the children of Holy Mother Church that Ralph of Manby, the plaintiff, is an excommunicate person. Such an one, of course, can have no further audience, and the further hearing of the case is ordered to remain over *sine die*. In the Michaelmas term of the following year Ralph comes into court and shows letters from the Archbishop and from the Dean and Chapter of York testifying that he has been wholly absolved from the bond of excommunication. He is now therefore allowed to have a writ resummoning the defendant to appear. Then other delays occur. At last, three weeks after Easter in the seventh year of Edward II, the parties are got into court and a jury is got together to try the issue joined between them; and the jury say that the church of Thorganby is not a church, but a chapel annexed to the church of Aughton, and that hath been so annexed

¹ The *quare impedit* is a writ that lieth for him that hath purchased a manor with the advowson thereto belonging. The *darrein presentment* lieth only where a man or his ancestor hath formerly presented.

from a time higher than memory. So Ralph is to take naught by that jury, but is to be in mercy for his false claim.

Coke's story¹ of Chief Justice Gaudie is good evidence of a custom to change at Confirmation the Christian name conferred at baptism.² In support of the custom Coke quotes a dictum by HERLE C.J. in 9 Edward III to the effect that 'it may be that a woman was baptised by the name of Anable, and forty years after she was confirmed by the name of Douce, and then her name was changed, and after she was to be named Douce.'³ In *Grinsard v. Rous* (p. 152) BEREFORD C.J. states the law on the matter clearly and concisely. There is some dispute as to the name by which a woman should be described. By some her name is said to be Denise, by others Alice. 'It may be,' says the Chief Justice, 'that she was christened Denise and afterwards received the name Alice in Confirmation, or *vice versa*, and the name which the Bishop gave her will be her right name.'

There is, perhaps, a sufficient ecclesiastical savour about the case of *Hayward v. Carru* (p. 186) to entitle it to notice in this connexion. Harry the Hayward was a clerk in minor orders who was the cause of scandal in his neighbourhood by reason of his unlicensed intimacy with a certain widow called Agnes. It is fair to Agnes to say that she permitted this intimacy only because Harry had promised to marry her. But Harry recognised that there were difficulties in the way of keeping his promise. And we think we can see what some of those difficulties were. In the first place he probably knew something about the *Statutum de Bigamis*. Unfortunately Agnes was a widow. If Harry married her he would straightway become a 'bigamist' and, by force of the Statute, lose all the advantages of his clerical status. If in the future he should get into trouble with the secular authorities there would be no more pleading for him that he was Holy Church's man and must be delivered to the Bishop. This was one fact which, no doubt, made Harry hesitate. But there was another and perhaps an even more deterrent one. Pope Alexander III had enacted, and Pope Innocent III had confirmed the enactment,⁴ that no married

¹ 1 Inst., cap. 1, sect. 1.

² For some more modern instances see Phillimore's *Ecclesiastical Law* (2nd edit.), I, p. 518, and *Jones v. E. Hulton and Co.*, L.R. [1909] 2 K.B. p. 451.

³ *Herle*. Homme poet a divers temps aver divers nosmes mes nemy par baptisme car poet estre qe son nosme de baptisme fuit *Anable* et qe ele fuit de xl. ans avant ceo qe ele fuit confirme et adonque son nosme change

et ele adonque nosme *Douce* etc.—*Year Books*, Easter, 9 Edward III, p. 14, pl. 18.

⁴ 'Si qui clericorum infra subdiaconatum acceperint vxores ipsos ad relinquenda beneficia ecclesiastica et retinendas vxores districtione ecclesiastica compellatis.'—*Decretals*, Lib. III, tit. iii. cap. i. 'Mandamus quatenus huiusmodi clericos beneficiis ecclesiasticis priues.'—*Ibid.* cap. ii.

clerk in minor orders should be capable of holding any ecclesiastical office of profit, and there were many of these with pleasant incomes to be had by those who had the influence to get them. So Harry, who perhaps already held some comfortable *beneficium ecclesiasticum*, or, if he did not, had hoped that some day one might come his way, hesitated. But he was a clerk, and the scandal was notorious. There were little *fili nullius* running about whom everybody knew to be Harry's children. So the ecclesiastical authorities brought pressure to bear and said the scandal must be cured. Now it happened that Agnes had some six acres of arable land and half a messuage in her own right. If Agnes would give him those six acres and that half messuage then Harry said that he would marry her, otherwise he would not. They would be some compensation for the lost *beneficia ecclesiastica*. Agnes consented, and gave him a deed of enfeoffment. Harry then alienated the land to one John of Carswell. The next holder, how she came by it does not appear, is another Agnes—Agnes of Carswell. This Agnes gave the land to her son Richard, who granted it to John of Carru, the defendant in the present action, and warranted the title. Then Harry the Hayward died, and Agnes his widow brought her *cui in vita* against John of Carru, claiming to recover the land which she said John of Carru only held after the lease of her husband, whom in his life-time she could not oppose. The defendant vouches Richard of Carswell to warranty. Richard warrants and says that he had the land by the gift of his mother Agnes. But the first Agnes, Agnes the widow, tells her story; and from it we gather that though Harry the Hayward might know something about the *Statutum de Bigamis* and about Papa Constitutions, he had not learnt that important doctrine of the *lex terrae* that a charter of enfeoffment has not the least effect unless it be accompanied with delivery of seisin. Agnes the widow was able to prove to the jury's satisfaction that she had never delivered seisin of the land to her husband. The seisin, therefore, had always been in herself until Harry alienated, *cui in vita* etc. So the Court gives judgment that Agnes do recover her seisin of the land against John of Carru, who is to receive land to the same value from Richard, because Richard warranted the title to John; and Richard is in mercy. Richard comes off badly, yet there seems no reason to suppose that his action all through was not innocent.

Now let us turn to the purely secular reports. The most important and interesting of these—the most important and interesting in the whole volume—is the case of Formedon, *Belyng v. Anon.* (p. 176). The facts of this case strongly resemble the facts in the other case of Formedon, *Pomeray v. Raleye* (p. 174). They appear, however, to be distinct

cases, though I can find no record of *Belyng v. Anon.* in the Plea Roll. The only particular in which the two cases differ is that in *Pomeray v. Raleye* the son of the donees died before his parents, while in the other case he survived them. The reports of *Pomeray v. Raleye* call for no comment, but in the report of *Belyng v. Anon.*—it is a matter for regret that we have only one report—we have some remarks by counsel and a *dictum* by BEREฟอร์ด C.J., both of great interest, touching the Statute *de donis condicionalibus*. Before this Statute lands given to a man and the heirs of his body were alienable on the birth of an heir to the donee. For the very obvious reasons set forth in the Statute it was desired that this power to alienate lands given on such conditions upon the birth of an heir should be taken away; and the Statute has been held for centuries past by all lawyers and historians to have certainly restrained the alienation of lands so held until the highly ingenious method of a feigned recovery, invented many years later, practically made waste-paper of it. But we gather from the report of *Belyng v. Anon.* that in 5 Edward II this was not the view certainly taken of it. Let me set out the operative words of the Statute:

‘Ita quod non habeant illi quibus tenementum sic fuit datum sub condicione potestatem alienandi tenementum sic datum quo minus ad exitum illorum quibus tenementum sic fuerit datum remaneat post eorum obitum vel ad donatorem vel ad eius heredem si exitus deficiat per hoc quod nullus sit exitus omnino vel si aliquis exitus fuerit per mortem deficiet herede huiusmodi exitus deficiente’; or, in English, ‘so that they to whom the land was given under such condition shall have no power to alienate the land so given, but that it shall remain unto the issue of them to whom it was given after their death, or shall revert unto the giver or his heirs if issue fail, either by reason that there is no issue at all, or if any issue be, it fail by death, the heir of such issue failing.’ The meaning of this extract from the Statute depends entirely upon the meaning of the word ‘exitus’ or ‘issue.’ What did this term mean to draftsmen and lawyers in the time of Edward I and Edward II? Did it carry the enlarged meaning that we give to it to-day and which our predecessors have given to it for generations past, or did it carry for them the more limited meaning of issue in the first degree only? Did the issue of A. consist of his lineal descendants generation after generation, or did it consist only of the children actually begotten by him? It seems certain from the report of *Belyng v. Anon.* that it was after this latter fashion that SCROPE and BEREฟอร์ด C.J. would have defined the word. ‘The only persons restrained by the Statute,’ said SCROPE, ‘are the original feoffees’; and BEREฟอร์ด C.J. allows that this is the effect of the Statute as it stands—the meaning of the reservation will appear presently. And

if we take the 'issue' of the feoffee to mean only the children actually begotten by himself, then the Statute as it stands does restrain the feoffee and the feoffee only. If we consider carefully the expression 'the heir of such issue'—and we must, of course, take this, in the circumstances, as meaning 'the heir of the body of such issue'—then, I think, we see that the 'issue' of the draftsman of the Statute was not the 'issue' of the later lawyer, for to the latter 'the heir of the issue' is just as much and as truly 'issue' of the feoffee as he to whom he was heir, and the words 'heir of the issue' would be a meaningless superfluity; while, on the other hand, if 'issue' mean only issue in the first degree, then the expression 'heir of such issue' has a very definite meaning.¹ This, or something very like it, must be true, or BEREฟอร์ด C.J. and SCROPE, who himself became Chief Justice of the King's Bench, would not have been in agreement that the words of the Statute restrained only the original feoffee. Again, in 4 Edward III SHARDELOW—he, too, was afterwards raised to the Bench as one of the Justices of the Court of Common Pleas—said that 'the Statute restraineth alienation only by those to whom the tenements were given.'² It is true that STONORE C.J. would not accept this statement, but he had probably heard and remembered BEREฟอร์ด's decision; yet this is proof that so late as 4 Edward III we have a lawyer of reputation affirming that the Statute restrained only the original feoffees. I have said that BEREฟอร์ด allowed that this was the true interpretation of the Statute as it stands; but he went on to assert that 'he that made (or wrote) the Statute meant to bind the issue in fee tail as well as the feoffees until the tail had reached the fourth degree; and it was only through negligence that he omitted to insert express words in the Statute to that effect.' And then he immediately proceeded to read the missing words into the Statute and gave effect to them. And apparently no one protested. It seems not altogether unreasonable to suppose that it may have been from this strong action by BEREฟอร์ด that the Statute *de donis* derived that full power of restraint upon alienation of estates in tail which it continued to exercise until it was defeated by the invention of feigned recoveries. I can find nothing which throws any light upon the Chief Justice's assertion that the words which he read into the Statute ought to have been actually there, and were not there only through the carelessness of the draftsman—

¹ It may be noted that Du Cange, expressing, presumably, the opinion of Continental Latinists, defines *exitus* as *filii, liberi*.

² YBB. Trin. 4 Edward III, p. 29, case 4. *Schard*. Lestatut ne restreint l'alienation de nul autre forsque de ceux

as queux les tenements fueront dones par qi etc. . . . *Stonore*. Lestatut restreint le poar le issue en la tail daliener en prejudice de celuy en le reversion par expresse parol: donque a pluis fort home atteindra son poar restreint en prejudice de la tail.

for I suppose that by 'celuy qe fit lestatut' he meant the draftsman. And even according to BEREฟอร์ด the restraint upon alienation was intended to continue only for four generations. It is a strange story, yet BEREฟอร์ด was not likely to say so unequivocally what he did say unless he had some real ground for his assertion. Further research may throw some light upon the matter, but I can add nothing now to what I have written, beyond a few words suggested by BEREฟอร์ด's reference to the effect of 'four generations.' It will be remembered that Bracton says that lands given in free marriage were *quieta et libera ab omni seculari servitio etc. usque ad tertium heredem et usque ad quartum gradum ita quod tertius heres sit inclusivus*.¹ And Fleta tells us the reason of this: *in quarto gradu pro eo quod tunc vehementer presumitur quod terra non est pro defectu heredum donatoriorum reuersura*.² Further, proof of four generations of free men was a conclusive answer to an exception of villeinage.³ Possibly these legal principles were in BEREฟอร์ด's mind. In a later case, a report of which will be included in the next succeeding volume of this Series, he said that both in free marriage and under the Statute the tail lasted only until the fourth degree.

As the whole matter is of such great importance and interest it seems worth while quoting here the notices of the case to be found in the *Abridgements* of Fitzherbert and Brooke; neither of which, it will be noted, makes any reference to a limited restraint of four generations. The former has: 'The Statute *de donis condicionalibus* saith that they to whom a tenement shall have been given on such a condition shall not have the power of alienating it, and that, consequently, the words of the Statute do not restrain alienation by the issues in tail, but yet it was ruled by BEREฟอร์ด C.J. that the issue can no more alienate than those to whom the tenements were given; and he said that this was the intention of the maker of the Statute, and was only omitted through his negligence.'⁴ Brooke's *Abridgement*

¹ Bracton, lib. II, cap. 7, f. 21.

² Fleta, lib. III, cap. 11, f. 190 (ed. 1547).

³ See the case of *Rois v. The Abbot of St. Beni of Holme*, pp. 108 ff., below.

⁴ 'Lestatut de donis condicionalibus dicit ita quod non habeant illi quibus tenementum sic fuerit datum potestatem alienandi, issint qe les parolx ne restreignent les alienacions les issues en tail et vncore aiuge fuit par Berre. qe lissue ne aliene nyent puis qe ceux as queux les tenementes fueront dones, et dit qe ceo fuit lentent cesti qe fist lestatut, et ne fuit que soun negligens qe il fuit interlesse etc.'—Fitzherbert's *Abridge-*

ment, Formedon, fo. 19, case 52. 'Vide in laddicion de vetere natura breuium quod per aliquos purceo que lestatute W. 2 dit quod non habeant illi ad quos tenementum sic datum fuerit potestatem alienandi quod ergo lissue auoit power daliener contrari bareford et tota curia car lintent del statute fuit que lun ne lauter naueront power daliener et que le omission de cest paroll heires fuit misprise del Clerkes.'—Brooke's *Abridge-*
ment, Formedon, fo. 357^{vo}, case 71. I have not been able to identify the reference to *Vieux Natura Brevium* in any edition of that book accessible to me.

has : ' See in the " addition " of the *Old Natura Brevium* that because the Statute of Westminster II saith that those to whom tenements have been thus given are not to have power of alienation therefore the issue had power to alienate ; but BEREฟอร์ด C.J. and the whole Court held the contrary, for the intention of the Statute was that neither the one nor the other should have power to alienate, and the omission of this word " heirs " was owing to the mistake of the clerks.'

BEREFORD's action in giving a construction to the Statute which he admitted its words would not bear was undoubtedly a very strong one, and wholly opposed to the present judicial theory and practice of construing an Act of Parliament. But there is no hint of a protest. The powers of a mediaeval justice in interpreting the law, whether Statute Law or Common Law, seem to have been recognised as plenary. There were Justices who were prepared to go even further than BEREฟอร์ด himself would go. Where he drew the line and halted, they marched on. At any rate I know that one did. I cannot give his name here, but I can tell the story on BEREฟอร์ด's own authority ; and I take it from an unedited manuscript Year Book. A jury had acquitted a man charged with felony, evidently to the dissatisfaction of the Justices, SCROPE and SPIGURNEL, who had tried him. ' Since the jury have acquitted you, we acquit you,' said the former grudgingly, ' get you gone ' ; and the latter said that on the evidence the man ought to have been hanged. Then BEREฟอร์ด came into Court and all this was ' shown unto him.' No expression of his opinion is reported, and I leave who will to draw inferences, but he tells his brother Justices and the whole Court a story of how a man, or, more probably, a lad, was hanged in circumstances which the Chief Justice certainly considered afforded no legal warrant for his execution. He was sitting, he said, with another Justice at a Gaol Delivery. ' A master had a servant and the servant was punished by him ; and when the master was asleep in bed, the servant, intending to carry off his master's goods, came to his bedside at night with the intention of cutting his throat. The master was lying sound asleep with his back towards the servant, who gave him a deep wound on his neck, believing that he had cut his throat. Then he ran away. The master was quickly awakened by the copious bleeding and recognised that he had been wounded. He alarmed his neighbours, who got up and arrested the servant. He was charged before me, but I refused to let the matter go before a jury because the master was alive, and the servant was remanded to prison. And afterwards, by St. Mary ! he was arraigned before my companion and was hanged on the ground that in the circumstances the will must

be taken for the deed.' Then SPIGURNEL J. tells a like story. 'A woman left her husband and went to live with her avouterer; and the two of them determined to kill the husband. They assailed him in a quiet spot as he was riding to the Gaol Delivery and attacked him with arrows and knives and left him for dead, and then fled. When they had gone the husband picked himself up and came to the Delivery and showed the matter to the Justices there. And the Justices sent people in pursuit of the woman and her avouterer, and they arrested them and brought them before the Justices; and they were arraigned and an inquest was taken and a verdict was found embodying the facts stated, and thereupon the avouterer was hanged and the woman was burnt.'¹

The two cases of *Hakun v. Fairweather* and *Hapelsthorpe v. Fairweather* (pp. 219, 220) must be read and commented upon in connection with each other. The same man is defendant in both cases, and both cases are concerned with the same set of facts. Robert Hakun complains

¹ Un homme et sa femme et lour fille furent pris oue meinouere scilicet iij. peaux de berbitz et vn surcote queus il dussent felonousement auere [sic] emble en vn certain lieu estre ceo la femme et la fille furent de ceo enditez et de comune larcine et recetours de larouns et il furent de veo arrene et se mistrent en enqueste lenqueste dit qe le homme fut bon et leal et qe la femme et la fille furent coupables lenqueste fut par les Iustices si ele fut la femme le homme lenqueste dit qe oyl et demande fut coment le homme poet estre quitz et la femme coupable lenqueste dit qe le recetta autres larouns set eos [sic] nomina nesciuit ideo quere et qe le et la fille furent conuz larouns mes le baroun qant il fut aperceu de ceo il voida lour compaignies et sa meson demesne et demorra par aillours. *H. Scrop.* est il bon et leal en touz pointz? *Lenqueste* sire oyl. *H. Scrop* pur ceo qil vous aquitent nous vous aquitoms alez a dieu a qi *H. Spigurnel* dit qil fut pendable par examenement de la corone sulom le dit enquest et donqe vynt sire W. de Bereford et cest luy fut moustre et *Bereford* dit qe ascun temps deuant luy mesme et vn autre compaignon a la gaole etc. et vn tiel cas fut moustre vn mestre auoit vn garson et le garson fut pune de luy et qant son mestre fut couche pur ceo qil voleit enporter sez

bienz vint al list son mestre nuctandre et luy voleit auer trenche la gorge et donqe le mestre coucha envers et dorny durement issint qe le garson trencia durement son col et entendy qil auoit la gorge entrenche et il se retret le mestre par le graunt seynnure enveilla tost et assertty naufre et escria ses veysuns et eux leuerunt et pristront le garson et de ceo fut arrene et ieo ne voley mye prendre lenqueste pur ceo qe le homme fut viuant et il fut remys a la prisone et par seint marie autrefoitz fut arrene deuant moun compaignoun et pur tiel enchesoun fut pendu quia voluntas en ceo cas reputatur pro facto. Et *Spigurnel* moustra vn autre cas et dit qune femme se tint oue son aduoterer et lessa son baroun et lauoterer et luy compasserent la mort son baroun et luy assaillerent en vn pays auxi com il chiuacha vers la deliuerance et luy nauferent oue setes et coteux issint qe il luy lesserent com mortz et foirunt et le baroun leua qant il estoient fuyz et vynt a la deliuerance et moustra ceo cy as Iustices les Iustices maunderent gentez apres qe luy pristront et amenerent deuant eux et furent arrenez et sur ceo descendy lenqueste et troue fut par verdit tut issint par qi lauoterer fut pendu et la femme arse.—*Year Book*, Easter, 16 Edward II, Hale MSS. (Lincoln's Inn), 137(2), ff. 132^{vo}–133.

that Oliver Fairweather has disseised him of two acres of land, and he brings his assize of novel disseisin in the county of Nottinghamshire, where the land lies. Robert Hapelsthorpe complains that the same Oliver Fairweather has disseised him of certain parcels of land, and he brings his writ of entry in Common Bench. The parcels of land in demand in the latter case include the land in demand in the former case. There is also other land claimed in the second case, but with that we need not concern ourselves here. In this latter case the defendant, Oliver Fairweather, vouches Robert Hakun, the plaintiff in the first case, to warranty. In respect of that parcel of land which is in demand in both cases Robert Hakun refuses to warrant Fairweather, for he says that Fairweather has disseised him, Hakun, of that very land, and that he has now an assize of novel disseisin in respect of it pending in Nottinghamshire; and he asks the Court to say that in these circumstances he cannot be made to warrant Fairweather. Fairweather argues that Hakun cannot in this way escape warranting, for he, Fairweather, did not disseise him. And the issue is left to a jury, of which we hear nothing more. But it must be noted that the issue left to the jury was not whether Fairweather had disseised Hakun, but whether Hakun was bound to warrant Fairweather. The verdict of that jury, whatever it might be, would not affect the seisin of the land. Now let us return to the first case, where Robert Hakun, whom Fairweather in the second case vouches to warrant to him this parcel of land, is claiming this same parcel of land from this same Fairweather. Fairweather says that Hakun ought not to be allowed to have this assize, because an action has been brought against him, Hakun, at Westminster, claiming this same land, and an inquest has been joined there and is still pending as to whether Hakun is not bound to warrant his title to this land; and he asks the Court to say that during the pendency of that inquest in a higher court no assize should be allowed in the lower court. On the other hand it is argued on behalf of Hakun that the issues before the two courts are not the same. At Westminster all that is in issue is Hakun's liability to warrant Fairweather. In the lower court it is the right to seisin that is in issue. Further than this, if this assize should be delayed till after the jury at Westminster gave its verdict, and if that jury did in fact find that Fairweather had disseised Hakun, Fairweather will, of course, get no warranty from Hakun, and thereby Hapelsthorpe will get recovery from Fairweather, with the result that Fairweather will no longer be the tenant of the land which Hakun is seeking to recover, and consequently his writ will abate. These arguments prevailed with the Court, and the assize was awarded; but, as the record does not appear to have survived,

nothing can be told as to its finding. But, seeing that Hapelsthorpe does not appear to have pressed his case to an issue, we may reasonably suppose that Hakun recovered his seisin from Fairweather, and so that there was naught for Hapelsthorpe to recover.

Croft v. Ossington (p. 204) is noteworthy as providing an instance of a claimant obtaining seisin of land by a judicial writ, and also for the reasons which appear to have influenced the Court into coming to its decision. The facts need clearly setting out. I take the names from the record, as they vary and are to some extent interchanged in the different reports. Richard is the father of Agnes and the son of Thomas, Thomas the elder we will call him, as we shall have to speak of a younger Thomas. Thomas the elder is in seisin of the tenements with which the proceedings are concerned. We will not stop at present to inquire how he acquired his seisin. A fine is executed between this Thomas, Thomas of Ossington he is called therein, and one Denis of Croft. In this fine Thomas recognises that the tenements are the right of Denis through Thomas's own gift. In consideration of this recognition and of a rent of two pence a year Denis grants the tenements to Thomas and Gillian his wife and to the heirs of Thomas by Gillian, with reversion, in failure of such heirs, to Denis and Denis's heirs. Thomas the elder has a son, Thomas the younger. Thomas the elder survived his son Richard; and, upon the death of Thomas the elder, Agnes, the daughter of Richard, took possession of the tenements. Thomas the younger thereupon sued out a writ of *scire facias*, calling upon Agnes to show cause why execution of the fine should not be decreed by the Court, the effect of which decree would be to put himself, as his father's heir by Gillian, into possession of the tenements. Agnes comes into Court and says that Thomas her grandfather was never competent to give an estate tail to anyone, as he himself had no greater interest in the land than a life estate, which life estate was given to him by her father Richard. On her grandfather's death, therefore, she entered into possession of the land as her father's heir. She also says that at the time of the levying of the fine she was under age and *coverte* with a husband, and was no party to the fine. Probably Richard, her father, was dead at the date of the fine. Thomas the younger argues that the fine is there, still in force, and, being still in force, ought to be executed. 'If you were in possession,' Agnes retorts, 'and I brought my action to recover the land, you could not bar me from my action by this fine to which I was no party. Being out of possession you certainly ought not to be in any better position than you would be in if you were in possession, and therefore you ought not to be able to oust me by a fine by which you could not bar me

from recovery if you were already in possession.' 'But,' replies Thomas, or his counsel, 'if I were in possession I should have something more than the bare fine to rely upon. If I could not bar your recovery by that I could vouch Denis to warranty, and, if his warranty failed, then I could claim land to an equal value from his heir. If I do not recover seisin by this fine then I have no remedy at all. I not only lose this particular land, but I cannot recover its equivalent.' It seemed agreed that some hardship must ensue to one party or the other whichever way the Court decided. The fine was on Thomas's side. A good fine and valid. And the Court could not see that anything that Agnes had said invalidated it. So they gave judgment that Thomas should have immediate seisin of the lands granted by it : and Agnes was left to recover them, if she could, by her writ of entry *post terminum qui preterit*.

The reports of *Roys v. The Abbot of St. Benet of Holme* (p. 108) are interesting for more reasons than one : for some nice questions of law and pleading, and for a strange story of the lawless methods adopted by a mediaeval Abbot for the suppression of evidence that did not fall into line with his own theories as to his rights. It is a case of *ne vexes*. John Roys brings his action against the Abbot and complains that he exacts from him in respect of his freehold land other services than he ought to render. The Abbot's counsel immediately objects that John is the Abbot's villein, and therefore the Abbot need give him no answer to his complaint. But it so happened that the hearing of the action had been set down for the preceding Michaelmas term, and the Abbot, before the parties had appeared, had had himself essoined. John's counsel argues that by this action the Abbot had recognised John's right to sue him, had acknowledged that John was no villein of his, but a free man who might call him to account if he had wronged him. But the Court overruled this. 'You want us to infer that John is enfranchised in consequence of that,' said BERNARD C.J.; 'I do not agree, and so say more.' It seems, however, to have remained a moot point whether an essoinment by the Abbot after appearance would not have barred him from pleading that the plaintiff was his villein. The reason of the distinction is probably that before the parties had come actually face to face in Court the defendant might affect to say that he had no knowledge who the plaintiff was. Then there is another point of pleading. From the record we gather that the Abbot alleged that he was seised of John as of his villein at some time previous to the purchase of John's writ, and did not say that he was so seised of him at the time of the purchase of the writ or subsequently thereto. From a query added at the end of the fourth

report it is suggested that the Abbot could have rebutted John if he had said that he was seised of him as of his villein subsequently to the purchase of the writ. Note V carries the matter a step further and says that an allegation of villeinage must refer not only to the day when the writ was purchased, but to the time previous and subsequent thereto. As we cannot say with any certainty what lies latent in the final 'etc.' of Note VI we get no help from that Note. But it is clear that some discussion had taken place in Court on the question, though no hint of it is given in any of the reports; and we may perhaps accept Note V, which is given by most of our authorities, as containing the decision of the Justices; though it seems to be in conflict with the ruling of HENGHAM C.J. in a case of replevin where the defendant attempted to rebut the plaintiff by a plea of villeinage. 'Good people,' said the Chief Justice, addressing the jury, 'whether he be by right a villein or whether he be by right a free man, of that we do not charge you, but only of what condition he was on the day of the seizure,'¹ *i.e.* on the day on which the cause of action arose. The next objection taken on behalf of the plaintiff is that if the Abbot wants to rebut him on the plea of villeinage he must say a good deal more than he has said. The Chief Justice agrees. 'It is not enough,' he says, 'to say that he is your villein and was your villein on the day of the purchase of the writ etc. without saying further.' As a consequence of this ruling we get in the second report a fuller list of villein exactions than we commonly find. A word or two may be said about these here. The liability to reeveship is really a liability to any personal service the lord may require of his villein. Then we have '*rechat de la char et de saunk et redempeciouns pur filles marier et fiz.*' I cannot distinguish between '*rechat*' and '*redempeciouns*'—the literal meaning of both words is the same—but it may be hazarded that '*rechat de la char et de saunk*' covers what is commonly known as '*merchetum*,' and that the '*redempeciouns pur filles marier et fiz*' means a payment levied on the marriage of a son or daughter of a villein; though how, in the case of a daughter's marriage, '*rechat*' is to be distinguished from '*redempecioun*' is not clear. Then, finally, the Abbot claims the right of tallage at will. 'Now,' said the Chief Justice, 'your exception is full'; and, indeed, it would have been difficult to make it much fuller. And here it may be noted that according to our second report of this case it was after this fuller claim of seisin on the part of the Abbot that the exception

¹ Nota qe en un Replegiare villenage fut allege e lenqueste joynt. HENGHAM Bone gens sil seynt vileyn de dreyt ou franc de dreyt de ceo ne vous chargoms my mes de quel estat il fut ior de la

prise. LENQUESTE dit qil fut fraunk home et de franc estat. Et secundum opinionem plurium hoc non erit domino preiudiciale a son bref de neyfte.—*Year Books* (Rolls Series), 33 Edw. I, p. 431.

based on his essoin was taken on behalf of the plaintiff, while, according to the first report, it was taken before it. However this may have been, John Roys is now forced to meet and rebut, if he can, the Abbot's allegation of villeinage. John says that his great-great-grandfather was enfeoffed by a predecessor of the Abbot of thirty acres of land to hold freely, and that the four acres in respect of which the Abbot travaileth him are parcel of these thirty acres of freehold. And John has charters, charters with the common seal of the Abbey, he says, attached to them to prove that what he says is true. But these charters are so badly torn and mutilated, one gathers, that John dare not stake his case upon them. But he makes the most of his fragments by telling the Court how it comes about that he has but fragments to show them. This is not the first time, he says, that this Abbot has oppressed him. He has claimed these excessive services from him before now ; and because he knew that these charters of his predecessor which proved John's right to immunity were in John's possession he sent a party of his men who broke open John's doors and locks and carried off his goods and tore up his charters. And John has gone to the King's Court for remedy of all this and his complaint now abides trial there. The story is not without effect upon the Chief Justice. ' If the Abbot were to be convicted of that which you do charge against him,' he says, ' it would go far to uphold your free estate ' ; and the clerk of the Court whispers to him something of the danger of delay, and the Chief Justice repeats this and tells John that he ought first to have prosecuted his writ of trespass to an issue, and then he would have been able to come into Court with a strong answer to the Abbot's plea that he was his villein to be tallaged at his will. The Abbot's counsel jibe at John's fragments of charters. ' These be no charters,' they say ; ' this is but half a charter, at best.' And Denham, who appeared for John, did not dare to stake all his case on such fragments. The Abbot's men had doubtless taken care to leave John naught that would be of much use to him. And so there remained no other course open to him than the straightforward averment that he was a free man of free estate, and no villein at all. ' Ready to aver it.' The Abbot's counsel takes up the challenge, ' Ready to aver that he and his ancestors are and were villeins of the Abbot and his predecessors from a time higher than memory.' And so issue is joined, and the Sheriff has it in command to have a jury in Court to try this issue. But there is no record of that jury's finding, nor, indeed, any record that any jury did ever actually try the issue at all.

In *Attewych and others v. The Abbot of Bec-Herlowyn* (p. 125) we have another Abbot demanding villein services from other men who

say that they are men of the ancient demesne of the King who are not liable to the villein services that the Abbot doth demand from them. And they set out particularly the villein services which by grievous distrains he has forced them to render—‘ three days’ work a week from the Feast of St. Michael to the Feast of St. Peter-in-Chains,¹ to mow the meadowland and to reap every day during the time of harvest one acre of corn or to pay three pence and a halfpenny for each day, to furnish carriage at his demand, to plough one acre of land for the autumn sowing and one acre for the Lent sowing, and to be tallaged high and low and to pay merchet on the marriage of their daughters, and to be made his reeves when he chose, and many other villein services did he make them render.’ These men lived in the manor of Oakbourne. That they were villeins they did not dispute. But if they were villeins living on land that had been parcel of the King’s demesne on ‘ the day that Edward the Confessor was alive and was dead,’ then they held by fixed services, and no man might increase those services. Ancient demesne could be proved only by a definite statement in Domesday Book that the land in question was parcel of the King’s demesne land at the critical time. These men said that they were men of the manor of Oakbourne in Wiltshire, and that this manor was of the ancient demesne of the Crown. The Abbot in his answer said that before now these same complainants had brought a similar writ against him, saying then, as they said now, that they were men of the manor of Oakbourne which was of the ancient demesne of the Crown. But on the trial of that former writ it was proved by the record of Domesday that there were two manors in Wiltshire called Oakbourne, Oakbourne Regis and Oakbourne Miles, the former only of which was parcel of the ancient demesne of the Crown ; and, it being found that the complainants were men of the latter manor and not of the former, their complaint was dismissed. And the Abbot asked judgment whether in the face of this record of the earlier trial the plaintiffs could then say that they are men of Oakbourne Regis. If we are to understand the course of the arguments in the later trial we must note that what was settled by the earlier trial was merely that these men were of the manor of Oakbourne Miles. It was neither alleged nor settled that they were villeins of that manor. In this latter action the Abbot’s first answer is that these men are his villeins. The plaintiffs’ replication is that the Abbot cannot say they are his villeins, for they are men of the manor of Oakbourne Regis, which is ancient demesne. Then the Abbot tries to rebut them by pleading the record of the former trial, declaring

¹ August 1.

them to be men of the manor of Oakbourne Miles, which is not ancient demesne. The plaintiffs now tell the Abbot that he cannot make two different answers to their complaint, and that he must abide by one defence or the other, and whichever he abides by he must prove. He must choose between pleading that they are his villeins—which was his first plea—and pleading that they are men of the manor of Oakbourne Miles, which was his second plea: which plea will he hold by? The Abbot elects, with some reservation, to plead that they are his villeins. ‘But you cannot now do that,’ they say, ‘for by the mere fact that in the former trial you averred against us that we were men of Oakbourne Miles you made yourself a party to us as to free men, and you cannot now, in the face of that record which proves that you recognised us as free men, rebut us from our action by the plea of villeinage.’ The Court reserved judgment, and the parties were bidden to come again three weeks after Easter. But upon that day the plaintiffs cast an essoin till the quindenies of the Holy Trinity, and the Abbot was told to be present on the same day. The parties duly came, and were adjourned till the octaves of St. John the Baptist. They came then, and were once more adjourned till three weeks after Michaelmas; by which time, possibly, they had come to some agreement between themselves, for there is no record of them coming into Court again to trouble the Justices to adjourn them yet once more.

The case of *Brandeston v. Burgh* (p. 216) is interesting as disclosing an instance of a not very common agreement. William of Burgh, Archdeacon of Berkshire, had covenanted to procure a suitable marriage for one Joan and to maintain her at his own cost until he did so. There seems to have been no consideration for the agreement. At any rate none is stated. Anyway the Archdeacon had bound himself to find Joan a suitable husband and to provide her with board and lodging and all necessaries until he did so. This agreement appears to have been made on the Wednesday in Easter Week in the thirtieth year of Edward I, or, in our modern reckoning, on April 25, 1302. The Archdeacon found a home for Joan first at Yattendon in Berkshire and afterwards at New Sarum, or Salisbury, and all went well until the second Monday after Easter Day in the third year of Edward II, that is April 27, 1310, a space of just eight years. On this latter day the Archdeacon gathered a company of friends round him—he was not going to be without witnesses in case he should ever want them—and in their presence he offered one Peter, the son of Robert Delamere, to Joan for a husband. Joan refused to accept him, apparently on the ground that he was not a suitable match for her;

and thereupon the Archdeacon refused to do anything more for her. Joan then brought her action for breach of the agreement and laid her damages at a thousand pounds, a very large sum in 1310. The action came on for hearing in the Easter term of 1311. After statements by the parties to the effect given above—Joan did not say specifically that she had refused Peter for a husband, but only that she had never refused anyone who would have been a fit husband for her—the hearing was adjourned to the following term, when both the parties appeared in Court. Joan at once withdrew her claim, assigning, so far as the Roll tells us, no reason whatever. The result, of course, was that she and her pledges for the prosecution of her suit were put in mercy, and the Archdeacon was told that he might go away. And nothing more can be said with any confidence about the matter.

It is difficult to understand the case of *Huse v. Cogan* (p. 100). It was an action for nuisance. Roger Huse, parson of Bampton, claimed, as such parson, to have a right to hold certain fairs, and he alleged that Thomas Cogan prevented him holding these fairs. The writ, apparently, which BEREFOED C.J. described as ‘a truly wonderful writ,’ merely complained that the defendant had impeded the plaintiff so that he could not hold the fairs, without stating any definite acts done by the defendant to that end. Again, in the counting nothing definite is urged against the defendant, except the purely technical disturbance—if it were, in fact, one—of his appearing to the writ. Cogan, it seems to us, might well say that he should not be called upon for any defence. The Chief Justice himself appears to have had no doubt that the writ was abatable—‘never will I uphold this writ’—and yet judgment is reserved till the Trinity term, and then again till the Michaelmas term, when no judgment is given and nothing more is recorded of the matter.

Ford v. Burnel (p. 140) discloses an extraordinary piece of amateur draftsmanship, according to which the defendant, in consideration of certain services to be rendered to him by the plaintiff, was to enfeof the plaintiff of land to a stated value within six years; and, if he failed to do so, then, within those same six years, he was to be liable to a certain penalty. He had six years wherein to enfeof the plaintiff, and therefore could not be sued for the penalty until after the expiration of the six years, but, by the agreement, the liability to the penalty only existed during those same six years. ‘It was no lawyer,’ said Passeley, ‘who drafted such an agreement, but a man-at-arms.’ In one respect the report cannot be reconciled with the record. The report says that the plaintiff asked permission to sue out a better writ. Then comes an ‘etc.’ in which we may reasonably suppose that there

lies latent the statement that he received such permission. The record seems to deal with proceedings under the original writ, and under that writ only ; and under that writ the parties appear to go to judgment, though, as will be seen, like so many other parties to mediaeval actions, they never get to it. If, however, all the proceedings recorded in the Roll were under the original writ, it is as difficult in this case as in the case of *Huse v. Cogan* to understand why judgment should have been reserved.

Neither the reports nor the record of *Cooper v. Delegold* (pp. 84–96) are easily, if at all, intelligible without some further knowledge of the relationship of the parties than is apparent in them. Another case between the same parties, heard in the Trinity term of the same year, a report of which will appear in its proper place in this series, supplies us, to some extent, with the information that is lacking here. John the Cooper, the complainant, married Margery, the sister and subsequently the heiress of Richard Delegold of Sudbury ; which Richard had married Isoud, the defendant in the present action. Richard Delegold leased certain lands, part of his family inheritance, to one Richard Davy, and Richard Davy charged these tenements, in whose hands soever they might be, with a yearly payment of ten pounds in favour of Richard Delegold, Isoud and Isoud's heirs. Delegold died, and Davy assigned half of the tenements to Isoud in the name of dower. Then the other half—how, we need not inquire here—comes into the possession of Margery, heiress of Delegold and wife of John the Cooper. The rent charged on them is not paid by Margery and her husband. There is ten pounds due to Isoud, or she says that there is, and she seizes a horse for five pounds of the arrears and a mare for the other five. Isoud is in possession of half of the tenements on which the yearly rent of ten pounds is charged, and yet she avows the seizure of cattle to the value of the rent of the whole of the tenements. Her counsel attempts to justify such avowry on the ground that if different tenements be charged with a single rent, distraint for the whole rent may be made on any parcel of them. Agreed, says counsel on the other side, in the case where all the tenements are in the possession of a single tenant ; but, if the party to whom the rent is payable purchase a part of the tenements, then a proportionate part of the rent service is extinguished. The reply to this very reasonable answer is only intelligible when we read the record and bear in mind that for some reason or other two writs had been purchased against Isoud, one in respect of the seizure of a horse for five pounds, and the other in respect of the seizure of a mare for a second five pounds. Although the same record speaks of both writs, only one can have been actually

proceeded with, or Isoud's counsel would not have been able to argue that she was only avowing for five pounds, that is to say for half the rent, and so getting round the objection that although she was herself in possession of half the tenements she had levied distress for the amount of the rent charged on the whole of them. Her counsel declined to recognise the existence of the second writ complaining of the second seizure. At present he is only avowing for five pounds. It is no use for Cooper's counsel to say and to say again that Isoud declares that ten pounds are due to her though she herself is in possession of half the tenements charged. He is told that she is avowing for only half the rent. Then he says that there is another writ in respect of the seizure made for the other five pounds. 'Count of it,' says BEREFOED C.J., 'and we will make it all one issue.' But he does not make it all one issue. When Cooper's counsel again reiterates that Isoud is claiming to be entitled to levy distress for the whole rent the Chief Justice again tells him 'she is avowing for a hundred shillings. What is your answer to that?' There is much interesting and entertaining talk on the extinction or non-extinction of services of one kind and another by the repurchase by the original lessor of the charged tenements, but nothing practical comes of it all. In the end Cooper's counsel recognises that he cannot abate Isoud's writs on the ground that she is claiming twice as much rent as is due to her, and so he says that as the tenements are really his wife's he cannot go on without aid of her. He was allowed aid, and then, in the Easter term of the following year, the parties all come into Court by their attorneys, Margery joining herself with her husband; and John the Cooper and his wife now try to upset Isoud's avowry on the ground that Richard Davy was never so seised of the tenements as to be able to charge them. Isoud joins issue on that plea, and a jury is ordered. And there the record stops. Such an issue seems fraught with the possibility of grave injustice to John Cooper and his wife. If the jury ever came and if it found that Richard Davy was so seised of the tenements as to be able to charge them, then apparently John would be liable to pay, for half the tenements, the full rent of the whole of them. Before leaving this case I may draw attention to one of the rare personal observations by the reporter, of whose individuality the Year Books bear so few traces. When John the Cooper got leave to have aid of his wife he was told to sue out a writ summoning her to come to Court. In our second version Denham remarks that a man used to be able to bring his wife to Court without a summons; but in the first version the reporter, speaking for himself, with something of the sadness of the *laudator temporis acti*, tells us that 'such writ did not use to be

made of old time, but notice was sent to the wife to be here etc. But all was once other than it is now, and will be other again. New King, new law, new Justices, new masters.'

A few words about the reports of *Goldington v. Bassingbourne* (p. 42) must find place here. In the Trinity term of 3 Edward II William of Goldington brought his writ of conspiracy against John of Bassingbourne and three others. After some argument the writ was quashed by reason of a technical flaw in it. A fresh writ was sued out, and the case again came on for hearing in the Hilary term of the fifth year. In the volume of this Series¹ containing the reports of the Trinity term of the third year a report of the proceedings under the first writ is printed; and also a report of the proceedings under the second writ from the manuscript we call Y, a manuscript wherein the reports are not arranged in chronological order of years and terms, but according to the nature of the forms of action. The record of the proceedings under the first writ is also given, but not that of those under the second writ. In the present volume, besides the report from Y, which it seemed necessary to include here, as it is undoubtedly of the fifth year, and, indeed, is almost identical with the report in the manuscript we call G amongst the cases of that year, we have a second report of the later action, occurring, with slight variations, in three manuscripts. The record of the proceedings in this second action is also given in the present volume.

3. OF SOME IRREGULARITIES IN THE PROCEDURE OF THE COURT.

Two instances of irregularity in the procedure of the Court in cases reported in this volume are noted in the Roll. In the action of *quare impedit*, *Champion v. Havering, Leek and Stretton* (pp. 27-36), Master Richard of Havering, a man whom it is somewhat difficult to describe, for though he was sued as Archbishop of Dublin he was never actually consecrated,² failed to appear to answer the writ. The Sheriff had been ordered to distrain him by all his lands etc., but made return that Master Richard had naught whereby he could be distrained. Someone present in Court then stated that Master Richard had sufficient effects at Penkridge, within the county, whereby he could be distrained. This statement was apparently made quite unofficially and without any proof of its truth being tendered; yet the Court accepted it, and, acting upon it, again ordered the Sheriff to distrain Master Richard. Two other defendants had been attached to appear,

¹ *Year Books Series*, Vol. III, pp. 193 and 194.

² See the footnote on p. 28 below.

and these also did not come. Their recorded default should have been followed at once by an order to the Sheriff to distrain them, but no such order was made. Upon the return of the writ of distress against Master Richard, the plaintiffs were entitled to have a writ to the Bishop directing him to ignore Master Richard's claim, and to admit the plaintiffs' presentee as against Master Richard's. When these facts were afterwards pointed out, the Court at once admitted that the process against Master Richard had been improperly continued to the detriment of the plaintiffs through its own irregular action, and that it must, without delay, make amends for its own irregularity. The plaintiffs, consequently, at once got their writ to the Bishop and were awarded damages against Master Richard. Further, a writ of distress was ordered to issue immediately against the two other defendants.

In *Mason v. King* (pp. 102-106) six infant brothers and sisters claimed, through their guardian, certain land as the right of themselves and their mother. The Sheriff had been ordered to summon the mother to appear and prosecute the claim with her children. The Sheriff had neglected to do this, yet the Court ordered a jury to be summoned to determine the issue. Whether prompted by some *amicus curiae* or by their own second thoughts we are not told, but before the parties had got out of Court the Justices recognised the irregularity of their procedure and promptly quashed or suspended the order for the jury, adjourned the further hearing, and directed the Sheriff to summon the mother.

4. OF THE APPRENTICES.

In the reports included in this volume we have two interesting references to the apprentices of the law. They, as we know, stood in their crib, or, perhaps, cribs,¹ to gather what instruction they could from the arguments of the Serjeants and the *dicta* and judgments of the Justices of the Common Bench. In *Cooper v. Delegold* (p. 90), in the middle of an argument by counsel, BEREFOED C.J. says 'one thing I tell you for the learning of the young men that be about us,' evidently referring to the apprentices. But these young men were not contented to learn and to learn only. They wanted to show that they had actually acquired some learning; and, if it seemed to them that a Serjeant had said or done something unwisely, they apparently did not hesitate to say so. In *Mercer v. Launde, Willoughby* (p. 10) admitted a fact which he need not have admitted, an admission which

¹ See *Year Books Series*, Vol. IV, p. xlii.

the other side used against him ; and the reporter tells us that he was blamed for this admission 'by his client and by apprentices.' We should like to know when and where this blame was expressed. Was it whispered in the crib during the sitting of the Court? An answer to this question might throw some light on the origin of the Year Books. The reporter evidently agreed with the apprentices, for he says that *Willoughby* made this admission inadvisedly. Was he himself one of the apprentices in the crib, hearing and joining in their criticisms, with his note book in his hand?

5. OF SOME PARTICULAR WORDS OCCURRING IN THE
REPORTS INCLUDED IN THIS VOLUME.

There are a few individual words occurring in this volume of which something may be said here. Amongst these is 'regardant.' Of this word the *Oxford English Dictionary* says that as a law term it means 'attached to a manor,' and is used only in speaking of villeins regardant to a manor. In this, I presume, it is following Littleton. Coke, however, in commenting on Littleton, says 'yet in Old Bookes,' of which, in this case, Coke apparently got his knowledge through the medium of Fitzherbert's *Abridgement*, 'it was sometimes applied to services'¹; though he subsequently says, forgetting the *Abridgement* and the 'Old Bookes,' 'regardant (as our author saith) is only applied to a villeine.'² It was certainly applied in the 'Old Bookes' not only to services but to a good many other things as well. Here are some examples. On p. 7 of this volume we have *les seruices sount riguardaunz au maner de E.*, and on p. 49 *le honur de E. a qi ceus seruices sount riguardaunz*. It was applied to a reversion; e.g. *la reuercion regardant a li* (p. 207). It was applied to a franchise. *Le maner de Fauersham a qi la franchise auant dite est regardant*.³ It was used, too, of a lordship. *Al saunke Nicole si deit cele seignurie estre riguardaunt* (p. 9 below). It seems also to have been used in speaking of tenements. *Robert fu seisi de ceus tenementz et les tint de Esmon nostre baroun par seruices de chiuallrie com regardant a son maner* (page 52 below). Further, things might be regardant otherwise than to a manor. We have just seen a lordship *regardaunt al saunke Nicole*. Again on p. 11 we have *les seruices serront regardanz au saunk dount le doun vynt*. Other similar examples will be found in the reports of the same case. Again, on p. 11 we have *les seruices de ceus tenementz nous serront regardantz*. There has been much discussion as to the meaning of the word in the term 'villeins regardant.' I am not going to enter into that discussion

¹ Insts. sec. 181.

² Insts. sec. 184.

³ *Eyre of Kent of 5 and 6 Edward II*
(Selden Society Series), Vol. III, p. 191.

here, which may now be considered settled,¹ but some consideration of the sense in which the word was used by mediaeval lawyers may not be without its use. The inquiry will be simplified if we first ascertain the Latin equivalent. If a recording clerk wanted to mention in a plea roll something which in the spoken French of the court had been called 'regardant,' what word did he use? We shall not have to go far to find the answer to the question. I have already quoted here from the report on p. 11 of this volume the words *les seruices serront regardanz au saunk dount le doun vynt*. The corresponding words in the record are *spectat ius predicti manerii*. One more example will be sufficient, and this time we will compare the French of the report with the Latin, not of the Roll, but of the Statute Book. On p. 207 we have *la reuercion regardant a li*, and in the Statute of Westminster II, cap. ii, *illi ad quos spectat reuersio*. *Spectare* is, indeed, a very obvious translation of *regarder*, but the establishment of *spectare* as the equivalent of *regarder* carries us a good way in the investigation of the meaning of *regardant*, for *spectans* occurs much more frequently in the Rolls than *regardant* does in the reports. In the Abbot of Faversham's case, his counsel, after describing the franchises as regardant to the manor, changes his word and calls them *apurtenant a son maner de Fauersham*. The equivalent of this in the record is *libertates ad predicta maneria spectantes*. The *apent a Iohan et Alice a presenter* of the report on p. 27 is rendered *pertinet ad ipsos presentare* in the record. On p. 39 the *apent a la chrestiene court* of the report appears in the record as *ad forum spectat ecclesiasticum*. On p. 57 *a son don apent* appears in the Roll as *ad suum donum spectat*; and, one other example will suffice, the *apent a presenter* of the report on p. 212 is turned into *spectat presentare* in the Roll. We seem entitled, then, to say that the meaning of *regardant* includes the meanings of both *appendant* and *appurtenant* in French and of *spectans* and *pertinens* in Latin. That it includes the meanings of both *appendant* and *appurtenant* might, indeed, be fairly argued from a single sentence (on p. 8 of this volume) spoken by BEREFOED C.J. *Si furent les seruices issaunz de cele parcele riguardaunz et appurtenaunz al remenant du maner et vngore appurtenaunt deuient estre auxi com auant car la mort Isoud saunz heir de soun corps ne defet mye lappendance*. Here, first, *appurtenaunt* becomes the equivalent of *regardaunz et appurtenaunz*, and then that which is at first *regardant* and *appurtenant*, and then only *appurtenant*, becomes something which is *appendant*.

Something must now be said about the words *persoun* and *persona*, that I may give my reasons for translating *personam* in the phrase *quod idoneam personam admittat* as 'person,' and not as 'parson.'

¹ See Professor Vinogradoff's *Villainage in England*, pp. 50-56.

Anglo-French and Latin had each but one form of the word—*persoun* in Anglo-French and *persona* in Latin—to express the two meanings of ‘person’ and ‘parson.’ *Persoun* and *persona* sometimes mean the one and sometimes the other. In such connexions as *persoun del eglise de Brigham* or *persona ecclesie de Brigham*, there can be no doubt that we should say in English ‘the parson, i.e. the rector, of the church of Brigham.’ Only a rector was a parson. The old authorities distinguish sharply between a parson and a vicar. One of the canons of the Council of Oxford, of 1222, e.g., runs *Provideatque Diocesanus episcopus . . . utrum Vicarius onera ecclesie subire debeat an Persona*.¹ The writ to the Bishop requiring him to admit the patron’s presentee runs both in the case of a ‘parsonage’ or rectory and of a vicarage *quod idoneam personam admittat*. Clearly, in the case of a vicarage, it could not be technically correct to translate this as ‘a fit parson.’ But even in the case of a ‘parsonage’ was the word *personam* meant to carry the meaning of ‘parson’? Let us inquire. Another of the canons of the Council of Oxford runs *si quis ad ecclesiam aliquam presentetur episcopus presentatum ipsum dum tamen idoneus est nequaquam admittere differet*.² Yet another runs *statuimus igitur ut nullus episcopus ad vicariam quemquam admittat nisi etc*.³ Obviously the *quis* of the one canon and the *quemquam* of the other represent the English ‘anyone,’ ‘any person,’ and not ‘any parson’; and what *quis* and *quemquam* stand for in these canons it may fairly be said that *persona* stands for in the writ to the Bishop. Further, in a letter from Pope Alexander III to the Archbishop of Bourges, given by Roger of Hoveden,⁴ the actual words *personas idoneas* occur in a sense which admits of no doubt. The Pope is directing the Archbishop to go on a certain errand. If he cannot go himself he is to send *idoneas personas* in his stead. Here *personas idoneas* can only mean fit persons. On these grounds I think that in translating the Latin writ to the Bishop into English *idoneam personam* should be rendered ‘a fit person’ and not ‘a fit parson.’

According to the record in the case of *Bixley v. Bavent* (p. 4) the plaintiff complained, *inter alia*, of injury done to his *cygnus aerarius*. *Cygnus aerarius* seems to have meant in mediaeval Latin a young cygnet, though in no Latin dictionary which I have seen is there any mention of the use of *aerarius* in this connexion. The original meaning of the word is ‘pertaining to copper.’ The feathers of the young cygnet are sooty brown, and might fairly be likened to dull copper. The term of art, in later years at any rate, for an adult swan was *cygnus*

¹ Spelman’s *Concilia*, I, p. 184.

² *Ibid.* p. 182. ³ *Ibid.* p. 183.

⁴ *Chronica Magistri Rogeri Houedene* (Rolls Series), II, p. 33.

albus, and this was opposed to *cignettus*.¹ Earlier the adult swan seems to have been simply *cygnus*, while the distinguishing adjective was used to differentiate the cygnet, *cygnus aerarius*.

6. OF SOME BLUNDERS IN THE REPORTS.

Some conspicuous instances of the blunders of the hack scribes hired to make copies of the reports will be found in the following pages. Amongst them we may notice here a couple occurring in three out of the four variants of the first version of the report of *Champion v. Haverling, Leek and Stretton* (p. 27). It is a writ of *quare impedit* brought against the Archbishop-elect of Dublin and Geoffrey of Stanton. Instead of the correct reading *Geffrei de Stanton chapelyn* three of our texts have a *defere destatut chapelyn*. Without two other texts to guide him into the truth it is hard to say what a puzzled editor would have made out of this. A little further on in the same report Scrope begins a speech with the words *Geffrei le Chapelyn vous dit*. The three reports that before were at any rate at unity amongst themselves in their aberration now go severally astray, and after a fashion for which it is difficult to suggest any sort of excuse. *Geffrei de Stanton*, badly written, might, perhaps, look a little like *defere destatut* badly written to a sleepy scribe who was thinking of anything but his work, but the original *Geffrei* of the second instance can scarcely have been so badly written as to look like a *sauer* to the most careless of copyists. Another of the errant manuscripts prefixes the compendium of *scilicet*, and reads *scilicet a sauer*. The third manuscript has *sire*. It is hard to suggest any plausible explanation of these mistakes. On p. 50 the scribe makes Ingham talk nonsense in saying that his client was 'seised of the child'—*seisi de lenfant*. Here we have no other text to fall back on, but the obvious sense of the context so clearly requires us to read *seisi de la fealte* that we have no hesitation in saying that this is what the scribe should have written. The mistake noted on p. 7, of writing *counte* for *aunte*, would also have been easily emended even if we had not another manuscript to give us the true reading. Neither would it have been difficult to say that for the *et monumentum* in *cuius est onus eius erit et monumentum* on p. 11 we should read *emolumentum* in the absence of any text giving the true reading. Three of our four authorities for the first report of *The Abbot of Holland v. Ranuel* (p. 155) make the same slips in respect of a word which occurs several times in the report. Certain land was given to the Abbot and Brotherhood, with the attached condition or service that the donor should have the benefit of their prayers—*oreisons*. This service is referred to several times, and oftener than

¹ See, e.g., *The Case of Swans* in Coke's Reports, pt. vii.

not three of our manuscripts read *mesouns*, or some form of it, for *oreisons*—‘the benefit of houses’ instead of ‘the benefit of prayers.’ And it may be noted that the chief sinner in this matter is the scribe who made us the copy of the report which provides the version given in the old printed edition of the Year Books, where all the scribe’s mistakes still stand uncorrected for the bewilderment of students. In the first version of the report of *Colewell v. Park* three out of four MSS. read *bref* for *heir*; the latter clearly being the correct reading. Here the cause of the mistake is fairly intelligible. To a careless copyist the abbreviated forms of *bref* and *heir* might possibly look very much alike. The abbreviated forms of the Serjeants’ names provide pitfalls into which a careless copyist easily falls; e.g. we get *iugement* for *Ingham*, *ad idem* for a *Denom*, and *vice versa*; *tendoms* instead of *Toudeby*, and so on.

7. OF SOME MISCELLANEOUS MATTERS.

It may be remembered that the Justices in the Eyre of Kent of 5 & 6 Edward II made some strong utterances as to the right of the King to override statute law.¹ A similar claim was made for him during the hearing of *Curtenay v. The King* (p. 130) reported in this volume. The King was claiming a certain advowson against one Hugh. The last presentation had actually been made by one Isabel, who was dead; and the King was claiming through Isabel. ‘Isabel’s presentation does not tell against me,’ said Hugh, ‘for I was under age, and the fourth chapter of Westminster II is in my favour.’ ‘Statute doth not affect the King’s prerogative,’ Hartlepool replied.² There are some further striking *dicta* in the same case as to the King’s right to shift his ground at any time during the hearing of the action. ‘The King can change his title when he will,’ BEREฟอร์ด C.J. said.³

On p. 98 we get what is extremely rare at this date, the citation by name of a previously decided case, *Cooper v. Delegold*; and through the reports of that case, it may be noted, we learn something as to the number of counsel appearing in an important action. In *Cooper v. Delegold*, according to the reports, at least seven Serjeants were engaged.

One character with a small speaking-part, whom I cannot certainly identify, appears in the reports of two of the cases included in this volume. On p. 87, in one of the reports of *Cooper v. Delegold*, someone who is described as *Rodel* (or, in another version, *Roscel*) Justice, tells

¹ *Year Books Series*, Vol. V, pp. 161 and 175.

² P. 131 below.

³ P. 130 below.

the plaintiff to sue out a writ to summon his wife. In another version of the same report (p. 91) *Rotheler* (no *Justice* this time) tells the plaintiff to keep his days on the quindenes of the Trinity, and to sue out a writ to summon his wife. It is reasonable to suppose that the same person is speaking in both these instances, and that both references are to the same fact. For *Rotheler* in this second instance one of our manuscripts has *Bereford*. On p. 98, in *Drinkstone v. The Prioress of Markeyate*, *Rothelay* tells the plaintiff to sue out a writ to summon his wife. Who was this man with the varying name? The only Justice at the time with a name commencing with even the same two letters was ROUBERY J. He was of the King's Bench, though we do find him occasionally sitting with the Justices of the Common Bench. As *Rotheler* is only once described as a Justice, and as he never says anything which is obviously and necessarily the saying of a judge, we may plausibly conclude that he was not ROUBERY J. There is still in existence a writ¹ addressed by Edward II to BEREFORD C.J. reciting that the Chief Justice, in consequence of certain arduous affairs, has been summoned to a Council at Berwick-upon-Tweed, on the morrow of St. Andrew, December 1, 1310, and directing him, in order to prevent any delays in the pleas pending, to commit, during his absence, the rolls of the Bench to the custody of Adam de Rothelaye in order that the suitors may be enabled to have recourse to the same. The only other reference to this Adam de Rothelaye which I have found is in the *De Banco* Roll of the Hilary term of 5 Edward II, r. 260d., where it is recorded that TRIKINGHAM J. issued a writ to the Sheriff ordering him to bring up in Court on a certain day the bodies of three defaulting defendants *ad instanciam domini Ade de Rotheleye*. From these references we may not unreasonably infer that Rothelaye was the chief clerk of the Court; and we know from evidence contained in this volume that the clerks of the Court did now and again intervene with directions as to procedure.² On p. 108, for example, Ridevale, who, fortunately, to spare us further puzzlement, is described on p. 45 as *clericus*, says: 'Enter the case for hearing, and let the defendant object the plaintiff's age, if he wish it.' It is, of course, just possible that *Rotheler* is a mistake, caused by carelessness or bad writing, for *Ridevale*, but it seems more probable, on the whole, that it is the Adam de Rothelaye of Edward II's writ who is speaking. Sir Frederick Pollock suggests that the scribe who tacked 'Justice' on to the name of this man of doubtful identity did so sarcastically. We

¹ See *Parliamentary Writs*, Vol. II, 1313), p. 286.
Division II, Appendix, p. 32, No. 12,

and the *Calendar of Patent Rolls* (1307-
² See pp. 45, 104, 108 below.

gather from this scribe's own note on p. 87 that he resented what he considered a departure from the practice of earlier and better times ; and he probably looked upon ' Rodel ' as a presumptuous innovator exceeding the limits of his office.

I am indebted to Sir Frederick for several other useful suggestions ; and for these, as well as for the active interest he has taken in the editing of this volume, I here record my thanks.

LEGAL ALENDAR

FOR THE

FIFTH YEAR OF KING EDWARD II.



The fifth year of the reign began on July 8, 1311. The Sunday letters were C for 1311, and B and A for 1312 (Leap year). In 1312 Easter Day fell on March 26.

JUSTICES OF THE KING'S BENCH.

Roger le Brabazon C.J. ; Gilbert of Roubery ; Harry Spigurnel.

JUSTICES OF THE COMMON BENCH.

William of Bereford C.J. ; Lambert of Trikingham ; Hervey of Stanton ; John of Benstede ; Harry le Scrope.

NAMES OF COUNSEL WHO ARE MENTIONED IN THIS VOLUME.

Bingham	Ingham, <i>see</i> Hengham
Claver, John	Laufare, Nicholas of
Denham (Denom), John of	Malberthorpe, Robert of
Denham (Denom), William of	Miggeley, William of
Friskenev, William of	Passeley, Edmund of
Hartlepool (Hertipole), Geoffrey	Russell, Robert
of	Scrope, Geoffrey le
Hedon, Robert of	Stonore, John of
Hengham, John of	Sutton, Ellis of
Herle, William of	Toudeby, Gilbert of
Huntingdon, Ralph of	Westcote, John of
	Willoughby, Richard of

Of these the following are mentioned in the Reports, but not in the Plea Rolls of the Hilary and Easter terms of this year :

Bingham	Miggeley, William of
Hartlepool, Geoffrey of	Sutton, Ellis of
Malberthorpe, Robert of	Westcote, John of

The following are mentioned in the Plea Rolls only :

Boteler, W. le	Loveday, John
Hampton, Richard of	

THE YEAR BOOKS OF EDWARD II.

VOL. XI.

FIFTH YEAR.

PLACITA DE TERMINO SANCTI HILARII ANNO
 REGNI REGIS EDWARDI FILII REGIS
 EDWARDI QUINTO.

1. EUERE *v.* THE ABBOT OF OUR LADY OF YORK.¹

I.²

Quare impedit ou vn homme de religion auoit bref al Esuesqe saunt enquere de la appropriacion pur la noun seute le pleintif.

Labbe de nostre dame de Euerwik fut sommouns a respoudre a Ion de Euere en vn quare impedit. Le second ior Ion fut demande et ne vynt poynt. Labbe pria iugement de sa noun seute fut recorde a quarte ior. Labbe se profrit vt supra.

Pass. Ion est demande veet icy Ion prest de counter de vers vous.

Will. Nous demandoms iugement de la noun seute.

Denom. Vous nous auet demande par qi nous deymes primes dire nostre auys et pus a vostre persone respoudre *Item* suffret nous counter vers vous et pus pernet ceo qe vous poet de recorde et pus demorroms a peryl qe apent qe le iugement deit trencher ouwelement de vne part et de autre et mesk le iugement taillast pur nous nous ne aueroms my bref al Euesqe pur ceo qe nous nauoms mustre nostre dreit par qi nous deuoms primes counter.

Berr. Il dit qil nest pas partie a vos par vostre noun seute.

Par qi fut agarde qe labbe auoyt bref al Euesqe *non obstante reclamacione*, et qe la execucion se targera tant fut enquis pur la appropriacioun en morte mayn.

Stonor. Il nad my mestre en ceo cas de enquerer qe labbe ne porte nul bref eynz bref est porte vers ly et statut ne fet nul mencion si noun en cas Ou abbe ou prior porte bref et le tenant voille perdre

¹ Reported by *G*, *M*, *P* and *T*. Names of the parties to the action from the Record. ² Text of (1) from *G*.

PLEAS OF HILARY TERM IN THE FIFTH YEAR OF
KING EDWARD THE SON OF KING EDWARD.

1. EURE *v.* THE ABBOT OF OUR LADY OF YORK.

I.

Quare impedit where a man of religion had a writ to the Bishop by reason of the nonsuit of the plaintiff, without inquiry as to the appropriation into mortmain.

The Abbot of Our Lady of York was summoned to answer John of Eure in a *quare impedit*. John was called on the second day and did not come. The Abbot prayed judgment of his nonsuit. It was recorded on the fourth day. The Abbot proffered himself as above.

Passeley. John is called. See John here, ready to count against you.

Willoughby. We ask judgment on the nonsuit.

Denham. You have called us, and therefore we ought first to state our case, and then reply to you. Suffer us, then, to count against you ; and then get what good you can from the record, and afterwards we will abide judgment at our peril, for judgment ought to weigh indifferently the facts on one side and on the other, and even if judgment be given for us we shall not have a writ to the Bishop, because we have not shown our right.² Wherefore we ought to count [before judgment is given].

BEREFORD C.J. He saith that he is not party to you, by reason of your nonsuit.

Wherefore it was adjudged that the Abbot have a writ to the Bishop, this claim notwithstanding ; and that execution stand over until the appropriation into mortmain hath been inquired of.

Stonore. There is no need for any inquiry in these circumstances, for it is not the Abbot that hath brought the writ, but the writ hath been brought against him ; and the statute refers only to cases where an Abbot or a Prior hath brought a writ, and the tenant's purpose is to

¹ The official year at this time ended on March 24. ² See Stat. Westm. II. c. 32.

par default ou voil rendre, mes par cesti bref labbe est suppose tenant Et dautre part si la execucion seit targe tant lenqueste seit passe issi nauereit iames homme de religion son presentement qe si vn estraunge meyt debat et pus fut noun swy et la execucion fut targe tant lenqueste seit passe issi perdereit labbe son presentement etc.

Et pus labbe mist auant vne Chartre dil auncestre Ion qe granta la donesoun et confermement du Roy Henri et des autres Roys en si et su tant de confermenz ne bosoigne my qe lenqueste seit pris.

Hert. Le statut ne fet my a entendre mesqe de fet fet pus et vous mustrez evidence du fet auaunt le statut.

Berr. Si lenqueste seit pris vncore le chef seigneur put mettre debat qe put estre nent countresteant touz ceus evidences qe Labbe nauoyt vnqes la possessioun.

Brabasson. Mesqe Labbe eyt execucioun sor touz ceus euydences ceo ne turnera en nuly preiuditz ne a autre chef seigneur ne a Roy Car le iugement ne se fra my qil recouera eynz qil eyt bref etc.

Et concessum fuit quod haberet breue Episcopo non obstante reclamacione qil fut homme de religion. Et hoc supra evidencias supradictas breue concessum fuit ad inquirendum de dampnis.

II.¹

NOTE.

Nota la ou quare impedit est porte vers vn homme de religioun tut seit le pleintif noun swy Iustices nenquerront pas de la collusioun qe statutum non facit mencionem nisi vbi religiosi² implicitent tantum et non vbi implicitentur teste Sire Iohan ³de vere⁴ qe porta son quare impedit vers labbe de nostre Dame deuerwik ⁵et fut⁶ noun suy.⁷

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 1d., Yorkshire.

Abbas beate Marie Eboraci optulit se .iiiiij. versus Iohannem de Eure et Agnetem vxorem eius de placito quod permittat eos presentare idoneam personam ad ecclesiam de Stokesley que vacat et ad suam spectat dona-

¹ Text of (II) from *P*, collated with *M* and *T*.
²⁻⁴ *dure*, *T*. ⁴ *Berr*, *M*. ⁵⁻⁷ *M omits*.

² *de religiosis*, *M*.
⁶ *T adds etc*.

lose his case by default or to surrender [his land]; but in this writ the Abbot is supposed to be tenant. And, moreover, if execution be delayed until the inquest [as to the appropriation] have passed, then no man of religion would ever get his presentation, for if a stranger issue a writ and then be nonsuited, and execution be delayed until the inquest have passed, the Abbot will consequently lose his presentation etc.

And afterwards the Abbot tendered a charter of an ancestor of John who granted the advowson, together with confirmations by King Harry, and other Kings to the same effect. And in view of so many confirmations it was held that there was no need for an inquest.

Hartlepool. The statute contemplateth a deed made subsequently, and you are putting in evidence a deed made previously to the statute.

BEREFORD C.J. Even if the inquest be taken the chief lord may yet intervene, for, all these evidences notwithstanding, it is possible that the Abbot never had possession.

BRABAZON C.J. (K.B.). Even though the Abbot had execution by reason of all these evidences, that would be in no way to the prejudice of either the chief lord or the King, for judgment will not be that he recover, but that he have a writ etc.

And it was agreed that he should have a writ to the Bishop, the objection that he was a man of religion notwithstanding. And upon the evidences aforesaid a writ to inquire of damages was granted him.

II.

NOTE.

Note that where a *quare impedit* is brought against a man of religion, the Justices will not make inquiry as to collusion, even though the plaintiff be nonsuited, for the statute¹ refers only to the case of men of religion bringing action, and not to the case of action being brought against them; as appeareth in the case of Sir John de Vere that brought his *quare impedit* against the Abbot of Our Lady of York and was nonsuited.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 1d., Yorkshire.

The Abbot of Blessed Mary of York proffered himself on the fourth day against John of Eure and Agnes his wife on a plea that he permit them to present a fitting person to the church of Stokesley which is vacant and is

¹ Stat. Westm. II. c. 32.

Note from the Record—continued.

cionem etc. Et ipsi non veniunt Et fuerunt querentes Ideo consideratum est quod predictus Abbas inde sine die etc. Et habeat breue Archiepiscopo Eboracensi quod non obstante reclamacione predictorum Iohannis et Agnetis ad presentacionem ipsius Abbatis ad predictam ecclesiam idoneam personam admittat etc. Et predicti Iohannes et Agnes et plegii sui de proseguendo in misericordia scilicet Iohannes Bertram et Willelmus le Prouost etc. Et idem Abbas recuperet dampna sua ad valorem medietatis ecclesie predictae eo quod tempus semestre nondum elabitur etc. Set quia dubitatur de fraude contra statutum etc. ne terre tenementa seu aduocaciones ad manum mortuam deueniant quoquo modo Cesset executio Iudicii pro breui Habendo quousque sit inquisitum de iure ipsius Abbatis et ecclesie sue etc. prout more est Et Abbas dicit quod non est necessarie in hoc casu inquirere de aliqua collusionem seu fraude etc. Dicit enim quod quidam Guydo de Balliote quondam Patronus ecclesie predictae dedit aduocacionem eiusdem ecclesie deo et sancte Marie et Abbacie Eboracensis et Ricardo quondam Abbati Abbacie Eboracensis predictae etc. et monachis Sancte Marie Eboraci et vnam carucatam terre cum pertinenciis in predicta villa de Stokesleye. Et profert quandam cartam sub nomine ipsius Guydonis que testatur quod idem Guydo dedit in puram elemosinam deo et sancte Marie et Abacie predictae et Ricardo Abbati et Monachis Sancte Marie supradictis ecclesiam de Stockeleya et vnam carucatam terre in eadem villa vt predictum est Profert eciam Cartam Regis Henrici filii Imperatricis etc. quondam Regis Anglie que testatur quod idem Dominus Rex concessit et confirmauit ecclesie Sancte Marie Eboraci et Monachis ibidem domino seruientibus in puram elemosinam ecclesiam de Stokeslay supradictam cum omnibus pertinenciis suis. Et quod predicti Monachi bene et in pace et honorifice teneant predictam ecclesiam cum omnibus pertinenciis suis sicut Carta Guydonis de Ballyol testatur. Profert eciam Cartam Regis Henrici filii Willelmi Conquestoris quondam Regis Anglie que testatur quod idem Henricus Rex concessit in puram elemosinam Ricardo quondam Abbati Sancte Marie Eboraci predecessori predicti Abbatis et successoribus suis et abbacie sue predictae predictam ecclesiam de Stokesleye et predictam Carucatam terre in eadem villa quas predictus Guydo eis donauit Profert eciam Cartam Regis Ricardi quondam Regis Anglie consanguinei domini Regis nunc que testatur quod idem Dominus Rex concessit et dedit in puram elemosinam cuidam Roberto quondam Abbati beate Marie predecessori predicti Abbatis et successoribus suis et abbacie sue predictae et

Note from the Record—*continued*.

of their donation etc. And these do not come, and they were the complainants. It is considered, therefore, that the aforesaid Abbot go hence without day etc. And he is to have a writ to the Archbishop of York to admit a fitting person to the aforesaid church on the presentation of the same Abbot, the claim of the aforesaid John and Agnes notwithstanding. And the aforesaid John and Agnes and their pledges for prosecution, to wit, John Bertram and William the reeve, are to be in mercy. And the same Abbot is to recover his damages in the amount of a moiety of the value of the aforesaid church, seeing that a period of six months hath not yet elapsed etc. But because there seemeth to be some doubt as to an infringement of the Statute etc. against any lands, tenements or advowsons falling into mortmain by any means, execution is to stand over until a writ can be had for inquiry into the right of the aforesaid Abbot and his church etc., as is customary. And the Abbot saith that it is not necessary in the circumstances to make inquiry as to any collusion or fraud etc.; for he saith that one Guy of Balliol that was aforetime Patron of the aforesaid church did grant the advowson of the same church to God and St. Mary and the Abbey of York and Richard that was formerly Abbot of the Abbey of York aforesaid and to the monks of St. Mary of York, together with a carucate of land and its appurtenances in the aforesaid vill of Stokesley. And he proffereth a certain charter in the name of the same Guy witnessing that the same Guy did give in pure alms to God and St. Mary and the Abbey aforesaid and to Abbot Richard and the monks of St. Mary aforesaid the church of Stokesley and a carucate of land in the same vill, as is aforesaid; and he doth further proffer a charter¹ of King Harry the son of the Empress etc., aforetime King of England, witnessing that the same lord King did grant in pure alms and confirm to the Church of St. Mary of York and to the monks serving God therein the aforesaid church of Stokesley together with all its appurtenances; and that the aforesaid monks are to hold the aforesaid church together with all its appurtenances, as witnessed by the charter of Guy of Balliol, certainly, quietly, and by honourable service. And he doth further proffer a charter of King Harry that was the son of William the Conqueror, aforetime King of England, witnessing that that same King Harry did grant in pure alms to Richard that was aforetime Abbot of St. Mary of York, a predecessor of the aforesaid Abbot, and to his successors and to his Abbey aforesaid the aforesaid church of Stokesley and the aforesaid carucate of land in the same vill which the aforesaid Guy granted to them. He further proffereth a charter of King Richard that was aforetime King of England, cousin of our lord the King that now is, witnessing that the same lord King did grant and give in pure alms to one Robert, aforetime Abbot of Blessed Mary, a predecessor of the Abbot aforesaid, and to his successors and to his Abbey aforesaid and to the

¹ The text of this charter is given in Dugdale's *Monasticon*, III, p. 548. The text of the Archbishop of Canterbury's confirmation of Guy of Balliol's gift of the church of Stokesley is given

on p. 565 of the same volume. This action and its result are noted in the Registers of the Diocese. See Harl. MS. (British Museum) 6970, f. 220.

Note from the Record—continued.

Monachis ibidem deo seruientibus predictam ecclesiam de Stokeleya et vnam carucatam terre in eadem villa Profert eciam Cartam Regis Henrici aui domini Regis nunc que testatur quod idem dominus Rex concessit et donauit in Puram elemosinam cuidam Sauarico quondam Abbati beate Marie predecessori predicti Abbatis et successoribus suis et abbacie sue predictae et Monachis ibidem deo seruientibus ecclesiam predictam et vnam carucatam terre in predicta villa Profert eciam Cartam domini Regis nunc que testatur quod idem dominus Rex nunc inspectis Cartis Regum predictorum supradictis et Carta predicti Guydonis de Balliol de donacione predictae ecclesie donaciones concessiones et confirmaciones predictas ratas habens et gratas eas pro se et heredibus quantum in ipso est predicto Abbati nunc et successoribus suis et monachis ibidem deo seruientibus concessit et confirmauit sicut carte predictae resonabiliter testantur vnde idem Abbas dicit quod per facta et euidentias predictas satis constare potest de iure et possessione predicti Abbatis et predecessorum suorum et ecclesie sue predictae Dicit Insuper quod ipse non est in casu statuti etc. eo quod predicti Iohannes et Agnes tulerunt predictum breue super ipsum Abbatem per quod idem Abbas nichil aliud retinet nisi statum quem ipse et predecessores sui prius habuerunt in aduocatione predicta de quo vt patet superius satis est ostensum pro iure ecclesie sue predictae Et petit quod executio etc. non differatur etc. Et quia hoc idem videtur Curie per euidentias predictas Ideo procedat executio etc. Et predictus Abbas habeat breue Archiepiscopo vt predictum est et dampna sua etc. Et preceptum est vicecomiti quod per sacramentum proborum et legalium hominum etc. diligenter inquireat quantum predicta ecclesia valet per annum in omnibus etc. Et inquisitionem etc. scire faciat hic a die Pasche in xv dies sub sigillo et sigillis etc.

2. BIXLEY *v.* BAVENT.¹

Replegiare de Cinez ou la uowere fut fet pur ceo qil les troua en sa seuerel pescherie desolant soun pessoun etc.

William Peicel² se plaint qe Thomas Bauastre atort auoit pris quatre de ces cines en H.³

Lauf. Thomas vous dist qil ne prist qe treis de ces cines et ⁴en dreit de ceus si⁵ auowe la prise par la resoun qil les troua en aïlesmere⁶ en soun⁷ seuerel pescherie appurtenant a soun maner de C. pessant sa herbe et destruant soun pessoun destruant ces sines Eyrers⁸ et desolant soun rosse⁹ etc. ensi¹⁰ a vouwe etc.

Wilbi. Vous preites quatre de nos sines des queux nous aumons la deliuerance de les deus et ¹¹des autres gaget la deliuerance.¹²

¹ Reported by *G* and *R* and *Y*. Text from *R* collated with *G* and *Y*. Head-note from *G*. Names of the parties from the Plea Roll. ² Peusel, *G*.

²⁻³ porta soun Replegiare deuers Thomas Bauent et dit qe atort prit ses iiij. Cinez en N. etc., *G*. ⁴⁻⁵ Supplied from *G*. ⁶ Alismere, *G*. ⁷ sa, *G*.

⁸ Heyronz, *G*; Eyrons, *Y*. ⁹ Roser, *G*. ⁹⁻¹⁰ et issi, *G*, *Y*. ¹¹⁻¹² gaget la deliuerance des autrez deus, *G*.

Note from the Record—*continued.*

monks serving God therein the aforesaid church of Stokesley and a carucate of land in the same vill. He doth further proffer a charter of King Harry, grandfather of our lord the King that now is, witnessing that that same lord King did grant and give in pure alms to one Savary that was aforesaid Abbot of Blessed Mary, a predecessor of the aforesaid Abbot, and to his successors and to his Abbey aforesaid and to the monks serving God therein, the aforesaid church and a carucate of land in the aforesaid vill. And he doth further proffer a charter of our lord the King that now is witnessing that the same lord King, having inspected the charters named above of the Kings aforesaid and the charter of Guy of Balliol touching the donation of the aforesaid church, and having considered the aforesaid donations, grants and confirmations and having approved of them, did for himself and for his heirs, as far as in him lay, grant and confirm to the aforesaid Abbot that now is and to his successors and to the monks serving God in that same Abbey according as the charters aforesaid plainly witness. And in respect of these the same Abbot doth say that the right and possession of the aforesaid Abbot and of his predecessors and of their aforesaid church can be sufficiently determined through the deeds and witnesses aforesaid. He doth further say that he doth not come within the circumstances of the statute etc., because the aforesaid John and Agnes brought the aforesaid writ against the same Abbot, and this writ doth not allege aught against him further than that he doth continue to hold the same estate with regard to the aforesaid advowson as he and his predecessors have hitherto held, touching which sufficient has been shown to establish the right of his church, as doth appear above. And he doth pray that execution etc. may not be delayed. And because this appeareth so to the Court by reason of the aforesaid witnesses therefore execution is to issue etc. And the aforesaid Abbot is to have a writ to the Archbishop as is aforesaid, and his damages etc. And the Sheriff is charged to make diligent inquiry by the oath of credible and law-worthy men etc. as to the yearly value of the aforesaid church in all respects. And he is to return the inquisition here under the seal and seals etc. upon the quindene of Easter.

2. BIXLEY v. BAVENT.

Replevin of swans where the avowry was based on the fact that the avowant found the swans in his several fishery destroying his fish etc.

William Peicel complaineth that Thomas Bavastre hath wrongfully taken four of his swans in H.

Laufer. Thomas telleth you that he did take but three of William's swans; and in respect of these he doth avow the taking by reason that he found them in Ailsmere, in his several fishery appurtenant to his manor of C., treading down his grass and destroying his fish, destroying his cygnets and destroying his roach etc.; so he hath avowed etc.

Willoughby. You took four of our swans, of two of which we have had deliverance. Give us gage for the deliverance of the two others.

Launf. Nous ne preimes qe treis de vos sines des queux la deliuer-
aunce vous est fet prest delauerrer.

Wilbi. Qe vous pristes quatre prest etc.

Berr. De ceo estes a trauers par quei pledet outre.

Wilbi. Il ount auowe ceste prise en ailsmere cum en lour seueral
pescherie appurtenant etc. nous vous dioms qe aillesmere est nostre
commune ¹pescherie et ad este commune² a nous et a nos auncestres et
pur auer nos sines illeqes Erreuns³ a nostre uolente de temps dount
nad memorie prest etc.

Et alii e contra. Et mirabatur quibusdam quare non dixit coment
commune vt patet⁴ in termino sancti Michaelis proximo preterito in
quodam replegiare in communa pastura⁵ set credo quod hoc fuit
ratione aque quia aqua non est in solo alicuius.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 2, Suffolk.

Thomas de Bauent summonitus fuit ad respondendum Ricardo de Byskele
de placito quare cepit cignos ipsius Ricardi et eos iniuste detinuit contra
vadium et plegios etc. Et vnde idem Ricardus per Adam de Westhale
attornatum suum queritur quod predictus Thomas die veneris proxima post
festum Purificacionis beate Marie anno regni domini Regis nunc quarto
in villa de Northhales in quodam loco qui vocatur Athelingmere cepit
quatuor cignos ipsius Ricardi et eos iniuste detinuit contra vadium etc.
quousque de duobus predictorum cignorum habuit deliberacionem etc.
et predictus Thomas alios duos cygnos adhuc detinet etc. vnde dicit quod
deterioratus est et dampnum habet ad valenciam centum solidorum Et
inde producit sectam etc. Et petit quod idem Thomas vadiat ei
deliberacionem de predictis duobus cygnis etc.

Et Thomas venit et defendit vim et iniuriam quando etc. Et dicit
quod cum predictus Ricardus supponit predictum Thomam cepisse quatuor
cygnos suos etc. idem Thomas non cepit nisi tres cygnos predicti Ricardi
tantum vnde ipse habuit deliberacionem etc. et hoc paratus est verificare
etc. Et de cygnis illis aduocat ipse capcionem predictam in predicto loco
et iuste etc. Quia dicit quod predictus locus de Athelingmere est quedam
aqua separalis ipsius Thome pertinens ad manerium eiusdem Thome de
Estone vbi nullus deberet habere cygnos nisi idem Thomas tantum et quia

¹⁻² Y omits.

³ Heyrons, G; eirons, Y.

⁴ patuit, G, Y.

⁵ pasture, G, Y.

Laufer. We did take but three of your swans, and of them deliverance hath been made to you. Ready to aver it.

Willoughby. Ready to aver that you took four.

BEREFORD C.J. You are at issue as to that, wherefore plead over.

Willoughby. They have avowed this seizure in Ailsmere as in their several fishery appurtenant etc. We tell you that Ailsmere is our common fishery and that it has been the common fishery of ourselves and our ancestors, to have our swans errant there at our will from a time beyond memory etc.

And the others joined issue. And there were certain that marvelled that *Laufer* did not ask for proof that the fishery was common, as it is recorded was done in Michaelmas Term last past in a certain replevin [for seizure] on a common pasture; but I believe that this was not done here by reason of water being concerned, for water is not on anyone's soil.¹

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 2, Suffolk.

Thomas of Bavent was summoned to answer Richard of Bixley of a plea that he took the swans of the same Richard and did unjustly detain them against gage and pledges etc. And thereof the same Richard, by Adam of Westhale his attorney, doth complain that the aforesaid Thomas on the Friday next after the Feast² of the Purification of Blessed Mary in the fourth year of the reign of our lord the King that now is in the vill of North Hales in a certain place called Athelingmere four swans of the said Richard did take and did unjustly detain against gage etc. until that the said Richard obtained deliverance of two of the aforesaid swans; and the aforesaid Thomas doth still detain the two other swans etc. whereby Richard saith that he hath suffered loss and hath damage to the amount of one hundred shillings. And thereof he produceth suit etc. And he prayeth that that same Thomas may give him gage for the deliverance of the aforesaid two swans etc.

And Thomas doth come and doth deny force and injury when etc. And he saith that whereas the aforesaid Richard doth allege that the aforesaid Thomas did take four of his swans etc. the said Thomas did take but three only of the swans of the aforesaid Richard, and of them he hath had deliverance etc.; and this he is ready to aver etc. And he doth avow the aforesaid seizure of those swans in the place aforesaid, and justly etc. For he saith that the aforesaid place of Athelingmere is a certain several water of him, Thomas, appurtenant to the same Thomas's manor of Eston, where no one is entitled to have swans save only the same Thomas; and because he

¹ This, of course, is not true. The property in water. See Blackstone, scribe probably means that there is no Bk. II, Ch. II. ² February 2.

Berr. Si retourn deuereit estre agarde il couendreit qe ceo feut ou a William ou a Symond car il ne se excuse mye ¹de ceo² tort qe la partie ly surmette ne a dit qe il nest pas nome en le bref.

Denom. Sire³ nous nauoms mye vnqore si auant plede qe nous deuoms del tort qe il nous surmette escuser mes nous auoms excepcioune a la variance entre le bref et counte issi qe si nous puissoms abatre soun counte nous qe sumes nomez et partie a ly deuoms auer lauauntage.

Will. Cest vn ple de prises des auers quele ple auant lauowere est tot en la personaltie par qi si ieo porte moun quare vi et armis deuers plusours qe vieignent en Court ieo counte vers euz et nome plusours en moun counte⁴ qe nest nome en moun bref ieo nentende⁵ mye qe moun counte serra par taunt abatu einz qe vous [*sic*] qe sount en court respoudront auxi par decea.

Denom. Vous auez assigne deus pernours en countant dount lun qe feut partie est nome porreit auower la prise pur lun et pur lautre et del hure qe par vostre counte lauez suppose destre de tiel estat qil porra auower pur ly et pur William et tant com vous lauez fait pernour iugement de puis qil nest pas nome en bref.

Berr. La ou vous dites qe Simound porreit auower etc. pur ly memes et pur William sil feut nome en bref vous dites mal car couient qe chesqun respounde seueralment qant il sount en Court trouez par qi dites outre.

Denom. William auowe la prise bone etc. qe memes cesty peres tient de ly vn mees oue les appurtenantz en N. et dount le leu etc. en est parcele par feaute et par les seruices de .iiij.⁶ soutz par an de queus seruices Isoud de L. cosine memes cesty William qi heir il est feut seist par mye la meyn mesmes cesty pieres com par mye la mayn soun verray tenant E pur .ij. s. arreres etc. del terme etc. si auowe il etc.

Will. Faites Isoud vostre cosine.

Denom. Isoud feut seisi dount de Isoud pur ceo qe ele morusi saunz heir de soun corps resorti le dreit de ceuz seruices a Cecile com a aunte et heir seor Iordan pere Isoud de Cecile a Iohane com fiz et heir ⁷de Iohan a William come a fitz et heir gore auowe.

Will. La ou vous dites qe Isoud fust seisi et deuia saunz heir⁸ de soun corps et puis faites vostre resort taunqe a Cecile com a aunte⁹ la dyoms qe a Cecilie nulle dreit de les seruices ne poit resortir qe les seruices sount regardaunz au maner de E. quel maner si feut en la

¹⁻² del, *P.*

³ Supplied from *P.*

⁴ Supplied from *P*; omitted in *M.*

⁵ nenten, *P.*
M has counte.

⁶ .iiij., *P.*

⁷⁻⁸ Supplied from *P.*

⁹ From *P*;

BEREFORD C.J. If return be awarded, should it be to William or Simon? For Simon doth not excuse himself of the tort imputed to him, nor doth he say that he is not named in the writ.

Denham. Sir, we have not yet arrived at that stage of the pleading where we should clear ourselves of the tort imputed to us. We are now taking exception to the variance between the writ and the counting; and if, on this ground, we can abate the plaintiff's counting, we who are named in the writ and are party in the case are entitled to the advantage.

Willoughby. This is a plea of the seizure of cattle, and such a plea, before avowry, is wholly personal. Wherefore if I bring my writ of *quare vi et armis* against several persons who come into Court, and I count against them, and, in my counting, name several others who are not named in the writ, I submit that my counting will not thereby be abated, but that those who are in Court will answer. So here.

Denham. In your counting you have assigned two persons as pernors, of whom the one that is named party in the writ could avow for both. Since you have, in your counting, supposed Simon to be of such equality with William that he can avow both for William and for himself, judgment whether he ought not to have been named in the writ.

BEREFORD C.J. When you say that Simon could avow etc. for himself and for William, if he were named in the writ, you are wrong; for each must answer severally for himself if he be present in Court. Therefore plead over.

Denham. William avoweth the seizure good etc., for this same Piers holdeth of him a messuage in N. with its appurtenances, of which the place etc. is parcel, by fealty and by the services of three shillings a year; of which services Isoud of L., cousin of this same William, whose heir William is, was seised by the hand of this same Piers as by the hand of her true tenant; and William avoweth for two shillings in arrear of the term etc.

Willoughby. Show how Isoud is your cousin.

Denham. Isoud was seised. Then, because Isoud died without heir of her body, the right to these services resorted to Cecily, the sister of Jordan that was father of Isoud, as aunt and heir. From Cecily the right descended to John as son and heir; from John to William the present avowant, as son and heir.

Willoughby. Whereas you say that Isoud was seised and died without heir of her body, and then make your resort to Cecily as to aunt, we say that no right to the services could resort to Cecily, for the services are regardant to the manor of E., which manor was in

Berr. Si retourn deureit estre agarde il couendreit qe ceo feut ou a William ou a Symond car il ne se excuse mye ¹de ceo² tort qe la partie ly surmette ne a dit qe il nest pas nome en le bref.

Denom. Sire³ nous nauoms mye vnqore si auant plede qe nous deuoms del tort qe il nous surmette escuser mes nous auoms excepcioune a la variance entre le bref et counte issi qe si nous puissoms abatre soun counte nous qe sumes nomez et partie a ly deuoms auer lauauntage.

Will. Cest vn ple de prises des auers quele ple auant lauowere est tot en la personaltie par qi si ieo porte moun quare vi et armis deuers plusours qe vieignent en Court ieo counte vers euz et nome plusours en moun counte⁴ qe nest nome en moun bref ieo nentende⁵ mye qe moun counte serra par taunt abatu einz qe vous [*sic*] qe sount en court respoudront auxi par decea.

Denom. Vous auez assigne deus pernours en countant dount lun qe feut partie est nome porreit auower la prise pur lun et pur lautre et del hure qe par vostre counte lauez suppose destre de tiel estat qil porra auower pur ly et pur William et tant com vous lauez fait pernour iugement de puis qil nest pas nome en bref.

Berr. La ou vous dites qe Simound porreit auower etc. pur ly memes et pur William sil feut nome en bref vous dites mal car couient qe chesqun respoude seueralment qant il sount en Court trouez par qi dites outre.

Denom. William auowe la prise bone etc. qe memes cesty peres tient de ly vn mees oue les appurtenantz en N. et dount le leu etc. en est parcele par feaute et par les seruices de .iij.⁶ soutz par an de queus seruices Isoud de L. cosine memes cesty William qi heir il est feut seist par mye la meyn mesmes cesty pieres com par mye la mayn soun verray tenant E pur .ij. s. arreres etc. del terme etc. si auowe il etc.

Will. Faites Isoud vostre cosine.

Denom. Isoud feut seisi dount de Isoud pur ceo qe ele morusi saunz heir de soun corps resorti le dreit de ceuz seruices a Cecile com a aunte et heir seor Iordan pere Isoud de Cecile a Iohane com fiz et heir ⁷de Iohan a William come a fitz et heir qore auowe.

Will. La ou vous dites qe Isoud fust seisi et deuia saunz heir⁸ de soun corps et puis faites vostre resort taunqe a Cecile com a aunte⁹ la dyoms qe a Cecilie nulle dreit de les seruices ne poit resortir qe les seruices sount regardaunz au maner de E. quel maner si feut en la

¹⁻² del, *P*.
⁵ nenten, *P*.
M has counte.

³ Supplied from *P*.
⁶ .iij., *P*.

⁴ Supplied from *P*; omitted in *M*.
⁷⁻⁸ Supplied from *P*.

⁹ From *P*;

BEREFORD C.J. If return be awarded, should it be to William or Simon? For Simon doth not excuse himself of the tort imputed to him, nor doth he say that he is not named in the writ.

Denham. Sir, we have not yet arrived at that stage of the pleading where we should clear ourselves of the tort imputed to us. We are now taking exception to the variance between the writ and the counting; and if, on this ground, we can abate the plaintiff's counting, we who are named in the writ and are party in the case are entitled to the advantage.

Willoughby. This is a plea of the seizure of cattle, and such a plea, before avowry, is wholly personal. Wherefore if I bring my writ of *quare vi et armis* against several persons who come into Court, and I count against them, and, in my counting, name several others who are not named in the writ, I submit that my counting will not thereby be abated, but that those who are in Court will answer. So here.

Denham. In your counting you have assigned two persons as pernors, of whom the one that is named party in the writ could avow for both. Since you have, in your counting, supposed Simon to be of such equality with William that he can avow both for William and for himself, judgment whether he ought not to have been named in the writ.

BEREFORD C.J. When you say that Simon could avow etc. for himself and for William, if he were named in the writ, you are wrong; for each must answer severally for himself if he be present in Court. Therefore plead over.

Denham. William avoweth the seizure good etc., for this same Piers holdeth of him a messuage in N. with its appurtenances, of which the place etc. is parcel, by fealty and by the services of three shillings a year; of which services Isoud of L., cousin of this same William, whose heir William is, was seised by the hand of this same Piers as by the hand of her true tenant; and William avoweth for two shillings in arrear of the term etc.

Willoughby. Show how Isoud is your cousin.

Denham. Isoud was seised. Then, because Isoud died without heir of her body, the right to these services resorted to Cecily, the sister of Jordan that was father of Isoud, as aunt and heir. From Cecily the right descended to John as son and heir; from John to William the present avowant, as son and heir.

Willoughby. Whereas you say that Isoud was seised and died without heir of her body, and then make your resort to Cecily as to aunt, we say that no right to the services could resort to Cecily, for the services are regardant to the manor of E., which manor was in

seisine vn Nichole femme Iordan les quels Iordan et Nichole ceo maner tindrent com del dreit Nichole par qi Iordan engendra de memes cely Nichole Isoud de L. de qi seisine William auowe de Nichole descendi le dit maner a Isoud com a fille et heir dount le mes qe pieres ore tient adonqs feut parcele la quele Isoud de mesmes cel mees enfeffa vn pieres deuant state a tenir de ly memes et de ces heirs par les seruices de .iiij. s. par an et del hure qe ceuz seruices sount regardauntz al dit maner quel maner deit resortir ou descendre en le saunke Nichole de qi ceo maner vint et a qi ceuz seruices etc. iugement si William qe se fait cosyn par my Iordan qest tot estraunge al saunke Nichole puisse en ceuz tenementz destreynte auower qar plus tost deuendreit eschete qil ne deuendreit en le Saunke le Baroun Nichole.

Malm. Et nous iugement del hure qe vous ne poiez dedire qe ceuz seruices ne comencerent en la seisine Isoud et auez coneu qe nous sumes cosyn mesmes cele Iseult et plus digne du saunke iugement de vostre conissance et prioms retorn.

Will. Nous dyoms qe le maner dount le mees est parcele si feut le heritage Isoud qe ly descendi de part Nichole sa mere.

Malm. Nous nauoms qe faire du maner einz auoms auowe pur certain seruices arreres et de la seisine Isoud et de pus qe vous ne poez lier sa seisine de les seruices de nulli des auncestres Isoud de pars sa mere einz comencerent en la persone Isoud iugement etc. E dautre part si Isoud eust purchace terres ou tenementz et de ceus eust enfeffe vn homme a tenir de ly et de ses heirs par certains seruices les seruices resorteront ou descendront plus tost en le saunke de part soun pere gen le saunke depart sa mere et est causa pur ceo qe le dreit de les seruices comencea en la persone Isabele¹ auxi de ceste part del hure qe vous auez memes coneu qe Isoud enfeffa peres par les seruices auant-ditz issint qe le dreit de la seignourie comencea en Isoud iugement etc.

Berr. Quant Isoud feffa pieres dune parcele del maner qe a ly feut descendi de part Nichole sa mere a tenir de ly et de ses heirs etc. et adonques si furent les seruices issaunz de cele parcele regardaunz et appurtenaunz al remenant du maner et vnqore appurtenaunt deuient estre auxi com auant Car la mort Isoud saunz heir de soun corps ne defet mye lappendance.

Malm. Si piers[]] feut enplede de la tenance et vouche nous a

¹ *From P ; M has Nichole.*

the seisin of one Nicholas,¹ the wife of Jordan, the which Jordan and Nicholas held this manor as of the right of Nicholas. Jordan begat of this same Nicholas Isoud of L. of whose seisin William avoweth. From Nicholas the said manor descended to Isoud as daughter and heir; and the messuage which Piers now holdeth was parcel of it. Of that same messuage the said Isoud enfeoffed one Piers, previously named, to hold of herself and her heirs by the services of four shillings a year; and, since these services are regardant to the said manor, that manor ought to resort or descend in the blood of Nicholas, from whom this manor came and to whom those services etc. Judgment whether William that maketh himself cousin through Jordan, that is a complete stranger to the blood of Nicholas, can avow distress in these tenements; for they would sooner escheat than descend in the blood of the husband of Nicholas.

Malberthorpe. And we, since you cannot deny that those services commenced during the seisin of Isoud, and have admitted that we are cousin of this same Isoud and nearest in blood, ask judgment of your admission and pray return.

Willoughby. We say that the manor, of which the messuage is parcel, was the heritage of Isoud which descended to her from Nicholas, her mother.

Malberthorpe. We have nothing to do with the manor, but we have avowed for certain services in arrear and on the seisin of Isoud; and since you cannot show that Isoud had seisin of the services through any ancestor on her mother's side, which seisin, on the contrary, originated in the person of Isoud herself, judgment etc. Again, if Isoud had purchased lands or tenements, and had enfeoffed anyone of these to hold of her and her heirs by certain services, the services would resort or descend in her father's blood rather than in her mother's; and the reason is because the right to the services originated in the person of Isoud. So here, since you yourselves have admitted that Isoud enfeoffed Piers by the services aforesaid, so that the right of the lordship originated in Isoud, judgment etc.

BEREFORD C.J. If, when Isoud enfeoffed Piers of a parcel of the manor which had descended to her from Nicholas, her mother, to hold of her and her heirs etc., the services issuing from that parcel were regardant and appurtenant to the rest of the manor, they remain appurtenant to it as before, for, since Isoud died without heir of her body, the appendancy continueth unaffected.

Malberthorpe. If Piers were to be impleaded in respect of the

¹ The name Nicholas was formerly common to both sexes.

garrantie par le fait Isoud nostre cosyne ieo ne sai lay mie deuoluper de la garrantie et par memes la raison si les seruices deiuent a nous estre regardaunz iugement etc.

Berr. hoc negauit et dixit quod consanguineus ex parte Nichole matris predictæ in hoc casu ligatus esset et haberet eschaetam si petrus fecerit feloniam.

Frisk. Cest seignourie feut le purchaz Isoud iugement si nous com cosyn ne puissoms ceste destreynte auower.

Berr. Quant vn homme feffe vn autre a tenir de ly etc. cele seignurie qe ly est reserue ly est due par dreit qil ount¹ en la tenance qant il se demist etc. Et del hure qe cele² dreit de cel tenance dount Isoud enfeffa Pieres ly feut descenduz de part Nichole sa mere ³par qi⁴ al saunke Nicole si⁵ deit cele seignurie estre regardaunt et pur ceo dites nous si cel mees etc. seit parcele du maner etc. qe descendi a Isoud de part Nichole sa mere ou noun.

Frisk. Sire⁶ plus haut estat qe al estat Isoud de qi seisine nous auoms auowe nauoms mestre a respoundre Et del hure qil ⁷nous ount⁸ coneu com⁹ verray heir a Isoud iugement etc.

Berr. Qant vous ne volez respoundre a nos demandez donques la Court la tendra a graunte.

Will. Il ne dedient qe les seruices pur quels il ount auowe sount issaunz des tenements qe a Isoud descendi de part Nichole a qi il sount tot estraunge iugement si¹⁰ auant qil eussent respoundu la seignurie entrestereit au chief seignur.

Et sic remanet dies datus est ad audiendum iudicium in octabis sancte Trinitatis etc.

II.¹¹

Replegiare ou femme enherite prist baroun [et] auoit issue lissue aliena atehir de lui et de ses heirs et deuia saunz heir le heir de part le pere fist auower pur les seruices.

Pieres¹² le Mercers se pleint qe William de la Launde et simound ¹³le fitz Roger¹⁴ atort pristerent ces auers.

Denum. defendit etc. et demanda lei¹⁵ du bref et du¹⁶ pone les queux ne feseint nul mencion de Simound.

¹ out, *P.* ² le, *P.* ³⁻⁴ a altre qe, *P.* a altre *has been interlineated above an erasure of one or two letters.* ⁵ ne, *P.* ⁶ Supplied from *P.*
⁷⁻⁸ Supplied from *P.* ⁹ Supplied from *P.* ¹⁰ qe, *P.* ¹¹ Text of II from *R* collated with *G* and *Y*. The headnote in *G* is: Replegiare ou le auoiant fyt le resort de seruicez qe furent du dreit la mere en le sanc le Pere et fut chalenge.
¹² Vn Pers, *G.* ¹³⁻¹⁴ *G* omits. ¹⁵ loy, *G, Y.* ¹⁶ dil, *Y.*

tenancy and if he vouched us to warranty by the deed of our cousin Isoud, I know of no law by which we could avoid the warranty ; and for the same reason the services ought to be regardant to us. Judgment etc.

BEREFORD C.J. denied this and said that a cousin on the side of Nicholas, the mother aforesaid, would be bound in the circumstances, and would have escheat if Piers committed felony.

Friskenev. This lordship was the purchase of Isoud. Judgment whether we, as cousin, cannot avow this distress.

BEREFORD C.J. When a man enfeoffeth another to hold of him etc. that lordship which is reserved to him when he maketh the demise is due to him in consequence of the right which he had in the [land that is the subject of the] tenancy. And since this right in respect of the tenancy of which Isoud enfeoffed Piers descended to her from her mother Nicholas, it follows that this lordship ought to be regardant to the blood of Nicholas ; therefore tell us whether or not this messuage be parcel of the manor etc. that descended to Isoud from Nicholas, her mother.

Friskenev. Sir, we have no need to answer as to any higher estate than the estate of Isoud, of whose seisin we have avowed. And seeing that they have admitted that we are true heir to Isoud, [we ask] judgment etc.

BEREFORD C.J. Since you will not answer our questions, the Court will take the matter for granted.

Willoughby. They do not deny that the services in respect of which they have avowed issue from the tenements which have descended to Isoud from Nicholas, to whom they are altogether strangers [in blood]. Judgment whether the lordship would not have escheated to the chief lord rather than have descended as they claim in their answer.

And so the matter standeth over. A day is given them in the Octaves of the Holy Trinity for hearing judgment.

II.

Replevin. A woman holding an estate of inheritance married and had a daughter. The daughter alienated to hold of her and her heirs and died without heir. The heir on her father's side avowed for the services.

Piers the mercer complaineth that William de la Launde and Simon the son of Roger wrongfully took his cattle.

Denham defended etc. and prayed *oyer* of the [original] writ and the *pone*, neither of which made any mention of Simon.

Denum. Et nous iugement desicom il suppose par soun counte deus persones et le bref ne veut qe William soulement sanz fere mencion de Simound ¹par quei nous prioms retourn etc.²

Berr. A qi serreit retourn agarde a Simound qe³ nest pas nome.⁴

Denum. A William.

*Berr.*⁵ Il ad counte qe William atort prist ces auers etc. et pur ceo dites ⁶autre chose si vous volez.⁷

Denum. William auowe la prise pur la resoun qe mesmes cesty pieres tient de ly vn mies en C. ou il se pleint pur fealte et pur les seruices de .iiij. s. par an des queux seruices ⁸Isoud de Longe⁹ Cosin le dist William qi heir il est etc. fust seisi par mi la mein ¹⁰le dit¹¹ pieres cum ¹²par my la mayn son verray tenant¹³ et pur .ij. s. arreres ¹⁴du terme de Pasche deuant le iour de la prise si auowe il etc.¹⁵

Wilbi. Fetes vous¹⁶ cosin.

Denum. Isoud fust seisi et deuia saunz heir de ¹⁷soun cors etc.¹⁸ de Isoud resorti le dreit des seruices a Cecille come a aunte et heir soer Iurdan piere Isoud de Cecille descendi le dreit des seruices a Ion com a fitz et heir de Ion a William qe ore auowe cum a frere¹⁹ et heir.

Wilbi. A William cum a heir ne pust²⁰ le dreit de ces²¹ seruices descendre par la resoun qe ²²le maner de E. en²³ qi maner ceux seruices sount fust²⁴ en la seisine vne Nichole femme²⁵ Iurdan ²⁶auant dist²⁷ cum soun heritage le quel Iurdan engendra ²⁸de cele Nichole la dist Isoud de long²⁹ et demandoms³⁰ iugement de sicum le heritage Nichole serroit plus tost eschete qil descendre³¹ en le saunk le baroun etc. et dist outre et male qe Isoud enfeffa cesti Piere a tenir de li et de ses heirs par les seruices auantdist et pur sa reconissance il fust blame de soun client ³²et de apprentices etc.³³

Malm. Et nous iugement desicum il ad conu qe Isoud enfeffa Peres par les seruices auantdist a tenir de lui et de ses heirs et il nad pas dist qe nous ne³⁴ sumes heir Isoud et demandoms iugement.

Wilbi. Nous dioms qe ceo fust le heritage Isoud et de part Nichole sa miere.

Malm. Ceux seruices pristerent lour nessaunce del feffement Isoud³⁵ a tenir de li et de ses heirs mes si Isoud vst purchace autres tenementz a li et a ces heirs tieu purchas vst plus tost descendy al

¹⁻² et prioms retorn, *G*, *Y*. ³ From *G* and *Y*; *R* has et. ⁴⁻⁵ etc. et, *G*. ⁶⁻⁷ outre, *G*. ⁸⁻⁹ Isabel de Longaspe, *G*. ⁹ longe champe, *Y*.
¹⁰⁻¹¹ Supplied from *G* and *Y*. ¹²⁻¹³ From *G* and *Y*; *R* has etc. ¹⁴⁻¹⁵ de
teu terme ior deuant la prise si auowe etc., *G*. ¹⁶ la, *G*; lui, *Y*. ¹⁷⁻¹⁸ sey, *G*.
¹⁹ fiz, *Y*. ²⁰ pout, *G*. ²¹ Supplied from *G*. ²²⁻²³ ceo maner de ceo
de, *G*. ²⁴ si fut, *G*. ²⁵ seore, *G*. ²⁶⁻²⁷ *G* omits. ²⁸⁻³⁰ cele
Isabel de Longaspe. ²⁹ longechampe, *Y*, *G*. ³¹ deuendra, *G*; deuendreit,
Y. ³²⁻³³ Supplied from *Y*. ³⁴ *G* omits. ³⁵ *G* omits.

Denham. And we ask judgment since in his counting he complaineth of two persons, while the writ doth refer to William only, without making any mention of Simon. Wherefore we pray return etc.

BEREFORD C.J. To whom should return be awarded? To Simon who is not named?

Denham. To William.

BEREFORD C.J. He hath counted that William wrongfully took his cattle etc., and so say something else, if you want.

Denham. William avoweth the seizure by reason that this same Piers holdeth of him a messuage in C., where he complaineth [that his cattle were seized,] by fealty and the service of four shillings a year; of which services Isoud of Longchamp, cousin of the said William who is her heir, was seised by the hand of the said Piers as by the hand of her true tenant; and for two shillings of the Easter term in arrear before the day of the seizure he avoweth etc.

Willoughby. Show how you are cousin.

Denham. Isoud was seised and died without heir of her body etc. From Isoud the right to the services resorted to Cecily as aunt and heir, being sister of Jordan that was Isoud's father. From Cecily the right to the services descended to John, as son and heir; from John to William, that now avoweth, as brother and heir.

Willoughby. The right to these services could not descend to William as heir, because the manor of E. in which manor these services are, was in the seisin of one Nicholas, the wife of Jordan aforesaid, as her heritage. The said Jordan begat of this Nicholas the said Isoud of Longchamp; and we ask judgment, since the heritage of Nicholas would escheat rather than descend in the blood of the husband etc.—And then he said further and inadvisedly that Isoud enfeofed this Piers to hold of her and her heirs by the services aforesaid; and for this admission he was blamed by his client and by apprentices etc.

Malberthorpe. And we ask for judgment since he hath admitted that Isoud enfeofed Piers to hold of her and her heirs by the services aforesaid, and he hath not said that we are not Isoud's heir; and we ask judgment.

Willoughby. We say that this was Isoud's heritage, and through Nicholas her mother.

Malberthorpe. These services had their origin in the feoffment by Isoud to hold of her and her heirs. But if Isoud had purchased other tenements to her and her heirs, such purchase would have descended

saunk le Pere qe au¹ saunk la Mere ²etc. et dautre part³ si pieres fust enplede de ceux tenementz ⁴et il vochat William com le heir Isoud Coment se retrerreyt il de sa garauntie Ieo crey qe iames.

Berr. Si cele heritage ne fut escheite par defaute dissue a qi descendereit etc. ieo entent qe al sanc dunt il primes vynt.⁵

Wilbi. Vous ne poez desdire qe cele⁶ terre aliene ne fust del⁷ heritage Isoud de part sa mere et aliene⁸ pur les services etc. pur quei les services serront regardanz au saunk dount ⁹le doun vynt.¹⁰

Scrop. Si le tenant de sa tenance nous vouche¹¹ a garrantie par le fet nous ne poums mie desauluper de la garrantie ¹²par quei¹³ les services¹⁴ de ceux tenementz nous serront regardantz quia cuius est onus eius erit emolumentum.¹⁵

Berr. Est vt sic est vt¹⁶ non et pur ceo chescun se auisse qe seit en le cas ¹⁷qe leir de part le pere ne serra iames chace a garrantie ne de acquiter¹⁸ saunz ceo qe leir de part le Pere ne seit seisi cum heir le issue de pere et de mere Et pur ceo loe ieo qe qant home vouche par le fet vn tiel cum heir qil vouche sagement celi qe de dreit li deit garrantir car le heir le pere ne garrantira mie le heritage la¹⁹ mere par le fet ²⁰le commun auncestre²¹ saunz ceo qe le tenant ne put attacher sur li seignurie cum par seisine des services ou autrement.

Frisk. Nous vous dioms qe les²² services sont del purchas Isoud et soun purchas deit plus tost regarder le²³ saunk le pere qe la mere pur la dignite etc. et demandoms iugement et prioms retourn.

Wilbi. Vous ne poez desdire qe ceus services ne sont issaunz de demesne qest del heritage Nichole mere Isoud etc. et nentendoms mie qe les services issaunz del demesne deuient deuener en le saunk le Pere Car plus tost ceo serreit escheit au chef seignur et demandoms iugement.

²⁴Et dies datus est eis de iudicio suo audiendo in Octabis Sancte Trinitatis etc.²⁵

¹ al, *G.* ²⁻³ *Malm, G.* ⁴⁻⁵ From *G.* *R* has il vochera a garrantie William cum heir Isoud Coment se de uolepreit il de la garaunti qe crai en nule manere; omitting the following speech by BEREFORD C.J. ⁶ *G* inserts heritage sauer. ⁷ la, *G.* ⁸ lesse par Isoud, *G.* ⁹⁻¹⁰ From *G*; *R* has il viendront. ¹¹ vochat, *G.* ¹²⁻¹³ ergo, *G.* ¹⁴ *G* adds qe sunt. ¹⁵ From *G* and *Y*; *R* has et monumentum. ¹⁶ *Y* omits. ¹⁷⁻¹⁸ dil heritage la mere ne serreit iames lyes de part le Pere de garrantir ne de acquiter ne la mere charge, *G*; kar del heritage la mere ne serra iames a les heirs de part le pere de garrantir ne de acquiter chargez, *Y.* ¹⁹ sa, *G.* ²⁰⁻²¹ Supplied from *G.* ²¹ heir, *Y.* ²² ceus, *G.* ²³ al, *G.* ²⁴⁻²⁵ Supplied from *Y.* *G* has Et adionatur in Octabas Trinitatis.

to the blood of the father in preference to the blood of the mother ; and, further, if Piers were to be impleaded in respect of these tenements and were to vouch William as Isoud's heir, I do not believe that William could ever free himself from warranting.

BEREFORD C.J. Supposing that this heritage did not escheat for failure of issue, to whom would it descend ? I am of opinion that it would descend in the blood from which it originally came.

Willoughby. You cannot deny that this land that was alienated was part of the heritage which Isoud had through her mother, and it was alienated in consideration of the services etc., wherefore the services will be regardant to the blood from which the gift came.

Scrope. If the tenant vouch us under the deed to warranty of his tenancy we could not avoid the warranty. Consequently the services of these tenements will be regardant to us, for the profit is to him who hath the responsibility.

BEREFORD C.J. That may or may not be, and so we must consider each particular case by itself ; for the heir on the side of the father will never be forced to give warranty or acquittance unless the heir on the side of the father be seised as heir of the issue of the father and the mother. And so, when a man would vouch under a deed anyone as heir, I would advise him to be careful that he vouch that one who is by right bound to warranty, for the heir of the father will never warrant, under the deed of a common ancestor, the inheritance of the mother, unless the tenant can attach lordship to him, as, for example, by seisin of services, or otherwise.

Friskenev. We tell you that the services are the purchase of Isoud, and her purchase should be regardant rather to the blood of the father, through the higher worthiness etc., than to that of the mother ; and we ask judgment and pray return.

Willoughby. You cannot deny that these services issue from demesne that is of the heritage of Nicholas, Isoud's mother etc., and we contend that services issuing from demesne ought to go in the blood of the father, for it would escheat to the chief lord sooner [than go in the blood of the mother], and we ask judgment.

And a day was given them for hearing their judgment in the octaves of the Holy Trinity etc.

III.¹

Auouere par heir de part le pere pur seruices reseruez de terre qe descendit de la mere.

Pers le mercer porta Replegiare vers William de la Launde et Simound.

Den. Il ad counte qe William et Simound pristrent et il niad null Simound nome el bref iugement de la variance et prioms retorn.

Berr. Chescun respoundra seueralment pur son dreit com en bref de terre par qei mesnomer dun ne durra pas auantage a altre par qei respounetz outre.

Den. auowa pur William par la reson qe Pers tent de li par felte et iiij.s. par an de queus seruices Isoud cosin William fu seisi par mi sa mein etc. et prest etc.

Wilb. Fetes vous cosin a Isoud.

Den. De Isoud pur ceo etc. sanz issu resorti a C. com a Aunt soer Iordan pere Isoud de C. descendi a William.

Wilb. Ceste terre fu parcel du maner de T. le qel maner descendi a Isoud de N. sa mere la quel Isoud auant state de cest terre enfeffa Pers a tenir de li et de ses heirs par tels seruices com vous auouez les qeus seruices deuient ressortir al sank cel de qil la terre descendi iugement si vous etc.

Den. Vous auez conu qe ceus seruices comencerent en Isoud et le porchase Isoud deit ressortir en plus digne sank et si ele vst oblige li et ses heirs a la garrantie nous serroms par tant lie com heir.

Scrop negat.

Berr. Apres le feffement furent les seruices regardant al remenant du maner com le demesne fu deuant dunt par la mort Isoud nest pas la apendance defaite estre ceo seruices reseruez par feffement sunt dutz ali par reson de dreit qil auait en la tenance la quel tenance deuereit auer resorti al sank dunt ele descendi per consequens les seruices issauntz de cel tenance par qei seez a vn de ceo qe la terre descendi et si vous ne seez a vn nous le tendroms agrante.

Wilb. Plus tost eschetereit al seignur qe ressortireit al sank le pere.

¹ Text of (III) from X.

III.

Avowry by the heir on the father's side for services reserved on land which descended from the mother.

Piers the mercer brought a *replegiare* against William de la Laund and Simon.

Denham. He hath counted that William and Simon took [the beasts] and there is no Simon named in the writ. Judgment of the variance; and we pray return.

BEREFORD C.J. Each one will answer severally for his own right, as in a writ of land, and therefore misnomer of one will not advantage the other. Therefore answer over.

Denham avowed for William for the reason that Piers held of him by fealty and [a service of] four shillings a year, of which services Isoud, William's cousin, was seised by his hand etc., and ready etc.

Willoughby. Show that you are Isoud's cousin.

Denham. From Isoud, because etc. without issue, [the right] resorted to C., sister of Jordan, Isoud's father, as aunt; from C. it descended to William.

Willoughby. This land was parcel of the manor of T., which manor descended to Isoud from N. her mother. This Isoud aforenamed enfeoffed Piers of this land to hold of her and her heirs by the services in respect of which you avow, and those services ought to resort to the blood of her from whom the land descended. Judgment whether you etc.

Denham. You have admitted that these services originated in Isoud, and Isoud's purchase ought to resort to the worthier blood; and, if she had bound herself and her heirs to warranty, we should be thereby bound as heir.

Scrope denieth this.

BEREFORD C.J. After the feoffment the services were regardant to the rest of the manor, as the demesne was previously. Consequently the appendancy is not defeated by Isoud's death. Further, services reserved by the feoffment are due to the feoffor, by reason of the right which he hath in the tenancy, which tenancy ought to have resorted to the blood from which it issued, and, consequently, the services issuing from that tenancy. Come to an agreement, therefore, between yourselves from whom the land descended; and if you do not agree we shall take the matter for granted.

Willoughby. The land would sooner escheat to the lord than resort to the blood of the father.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 21d., Lincolnshire.

Willelmus de la Launde summonitus fuit ad respondendum Petro le Mercer de Osberneby de placito quare cepit quandam equum ipsius Petri et eum iniuste detinuit contra vadium etc. Et vnde idem Petrus per attornatum suum queritur quod predictus Willelmus die veneris proxima ante festum apostolorum Philippi et Iacobi anno domini Regis nunc quarto in villa de Osberneby infra messuagium ipsius Petri in eadem villa cepit predictum equum et eum iniuste detinuit contra vadium etc. quousque etc. vnde dicit quod deterioratus est et dampnum habet ad valenciam Centum solidorum Et inde producit sectam etc.

Et Willelmus per attornatum suum venit Et defendit vim et iniuriam quando etc. Et bene aduocat predictam capcionem et iuste etc. Dicit enim quod idem Petrus tenet de eo predictum messuagium cum pertinenciis in villa predicta per fidelitatem et seruicium quatuor solidorum per annum De quibus seruiciis quedam Isabella de Lung Chaumpe consanguinea ipsius Willelmi cuius heres ipse est fuit seisita per manus ipsius Petri etc. Et de ipsa Isabella que obiit etc. resorciebatur Ius seruiciorum etc. cuidam Cecilie vt amite etc. sorori cuiusdam Iordani patris predictae Isabelle etc. Et de ipsa Cecilia descendit Ius etc. cuidam Ricardo vt filio et heredi Et de ipso Ricardo isti Willelmo qui nunc etc. vt filio et heredi etc. Et quia duo solidi de predicto reddito eidem Willelmo aretro fuerunt die capcionis etc. cepit ipse predictum equum nomino districcioni in predicto messuagio pro predictis duobus solidis tanquam heres ipsius Isabelle etc.

Et Petrus dicit quod idem Willelmus vt heres predictae Isabelle predictam capcionem iustam aduocare non potest etc. Dicit enim quod predicta Isabella aliquando fuit seisita de manerio de Oseberneby cum pertinenciis vnde predictum messuagium est pars etc. per descensum de quadam Nichola matre ipsius Isabelle etc. Et de ipsa Isabella quia obiit sine herede de se resorciebatur Ius predicti manerii cum pertinenciis quibusdam Sarre Elene et Matilde vt amitis et heredibus etc. Sororibus cuiusdam Willelmi patris predictae Nichole matris ipsius Isabelle Et de predicta Sarra descendit Ius propartis sue etc. cuidam Hugoni vt filio et heredi. Et de ipso Hugone descendit Ius etc. cuidam Iohanni de Pickworthe vt filio etc. Et de ipsa Elena descendit Ius propartis sue etc. cuidam Willelmo vt filio et heredi Et de ipso Willelmo cuidam Iohanni de Wywell vt filio etc. Et de predicta Matilda descendit Ius propartis sue etc. cuidam Iohanni vt filio et heredi etc. Et de ipso Iohanne quia obiit sine herede de se etc. descendit Ius etc.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 21d., Lincolnshire.

William de la Launde was summoned to answer Piers the mercer of Osbournby¹ of a plea why he took a certain horse, the property of that same Piers, and unjustly detained it against gage etc. Touching which the same Piers complaineth by his attorney that the aforesaid William on the Friday next before the Feast² of the Apostles Philip and James in the fourth year of the reign of the King that now is in the vill of Osbournby within the messuage of the same Piers in the same vill the aforesaid horse did take and it did unjustly detain against gage etc. until etc. ; whereby he saith that he suffered loss and hath damage to the amount of one hundred shillings. And thereof he produceth suit etc.

And William cometh by his attorney and defendeth force and injury when etc. And he avoweth the seizure aforesaid as being good and just etc. For he saith that this same Piers doth hold of him the aforesaid messuage, together with the appurtenances, in the vill aforesaid, by fealty and the service of four shillings a year ; of which services one Isabel of Longchamp, cousin of the same William, whose heir William is, was seised by the hands of this same Piers etc. And from that same Isabel, who died etc., the right to the services etc. resorted to a certain Cecily, the sister of a certain Jordan that was father of the aforesaid Isoud, as aunt etc. And from this Cecily the right etc. descended to one Richard as son and heir. And from that Richard to this William that now etc. as son and heir etc. And because two shillings of the aforesaid rent-service were in arrear to this same William on the day of the seizure he took the aforesaid horse in the name of distress within the aforesaid messuage for the aforesaid two shillings, as the heir of the aforesaid Isoud etc.

And Piers saith that the same William cannot justly avow the aforesaid seizure as heir of the aforesaid Isabel. For he saith that the aforesaid Isabel was at one time seised of the manor of Osbournby with its appurtenances by descent from a certain Nicholas, mother of the said Isabel etc., of which manor the aforesaid messuage is parcel etc. And because the said Isabel died without heir of her body the right of the aforesaid manor and its appurtenances resorted to a certain Sarah, Ellen and Maud, as aunts and heirs etc. being sisters of a certain William that was father of the aforesaid Nicholas, the mother of the said Isabel. And from the aforesaid Sarah the right of her proportionate share etc. descended to one Hugh as son and heir. And from this Hugh the right etc. descended to one John of Pickworth as son etc. And from the said Ellen the right of her proportionate share etc. descended to a certain William, as son and heir. And from this William to a certain John of Wyville as son etc. And from the aforesaid Maud the right of her proportionate share etc. descended to a certain John as son and heir etc. And because this John died without heir of his body etc. the right etc. descended to a certain

¹ Osbournby is five and a half miles south of Sleaford.

² May 1.

Note from the Record—*continued.*

cuidam Theobaldo vt fratri et heredi etc. Et de ipso Theobaldo quia obiit sine etc. cuidam Matilde vt sorori etc. Et de ipsa Matilda cuidam Waltero vt filio et heredi Et de ipso Waltero cuidam Iohanni de Murdeuale vt filio etc. Ad quos quidem Iohannem de Pyckworthe Iohannem de Wywell et Iohannem de Murdeuale tanquam participes et heredes propinquiores ipsius Isabelle in sanguine ex parte matris etc. spectat Ius predicti Manerii per descensum predictum Et dicit quod predicta Isabella de seisinâ sua feoffauit ipsum Petrum de predicto messuagio quod est parcella Manerii predicti Tenendum de ipsa Isabella et heredibus suis per predictum seruicium quatuor solidorum etc. Et ex quo predicta Isabella tenuit predictum dominicum vnde predictus redditus peruenit simul cum residuo predicti manerii vt Ius et hereditatem suam per descensum ex parte matris vt predictum est et petit Iudicium si predictus Willelmus faciendo resortum de predicta Isabella in sanguinem predicti Iordani quondam viri predictæ Nichole vt heres ipsius Isabelle aduocare possit etc.

Dies datus est hic de audiendo iudicio suo a die Pasche in tres septimanas saluis partibus racionibus suis hinc inde dicendis etc. Postea ad diem illum scilicet a die Pasche in tres septimanas venit tam predictus Willelmus quam predictus Petrus per attornatum suum Et dies datus est de audiendo iudicio suo hic a die Sancti Michaelis in .xv. dies saluis partibus racionibus suis dicendis etc. eo quod iudicium nondum etc.

4. ESEBATHÉ v. ESEBATHÉ.¹

Ael ou enfant dedeinz age porta le bref ou il [*sic*] fust mis en bar.

Maud Hesbath porta soun bref de ael vers Robert Hesbath et demanda le maner de E. et la vowesoun del esglise forspris .xl. s. de rente dedens mesme le maner etc. et counta de la seisine soun Ael descendi a soun pere de soun pere ali.

Malm. Qant ala tierce partie de cel maner nous vous dioms qe soun Ael ne morust pas seisi prest etc. et qant a les .ij. parties et lauowesoun etc. ele ne deit accion auer car en tens de cesti Roy le terme seint Michel lan secunde deuant vous mesmes se leua vne fin entre Richard de Hesbath de qi seisine ele demande et nous issint ke lauandist Richard graunta et rendi les .ij. parties del maner auantdist ensemblement oue lauowesoun etc. a nous et a nos heirs et obliga li et ses heirs a la garantie etc. et demandoms iugement si ele puisse accion auer.

¹ Reported by *R* only. Names of the parties from the Record.

Note from the Record—*continued.*

Theobald as brother and heir etc. And from this Theobald, because he died without etc. to a certain Maud as sister etc. And from this Maud to a certain Walter as son and heir. And from this Walter to a certain John of Murdevale as son etc. And to these John of Pickworth, John of Wyville and John of Murdevale, as parceners and nearest heirs of the aforesaid Isabel by the blood of the mother's side, the right of the aforesaid manor is regardant by reason of the aforesaid descent. And he saith that the aforesaid Isabel of her seisin did enfeof this same Piers of the aforesaid messuage which is parcel of the manor aforesaid to hold of the same Isabel and her heirs by the aforesaid service of four shillings etc., and of which the aforesaid Isabel held the aforesaid demesne whence the aforesaid rent service issues together with the residue of the aforesaid manor as her right and inheritance by descent on the side of the mother, as is aforesaid ; and he asketh judgment whether the aforesaid William, by making resort from the aforesaid Isabel to the blood of the aforesaid Jordan, that was husband of the aforesaid Nicholas, can avow etc. as heir of the same Isabel.

A day is given to them here three weeks from Easter to hear their judgment, saving to the parties their right to advance arguments etc. Afterwards upon that day, to wit, three weeks from Easter, the aforesaid William came, and also the aforesaid Piers by his attorney. And a day was given them here in the quindenes of St. Michael for hearing their judgment, saving to the parties their right to argue etc. because that judgment was not yet etc.

4. ESEBATHE *v.* ESEBATHE.

Ael, where an infant under age brought the writ, and pleaded infancy in bar of a fine tendered against her.

Maud Hesbath brought her writ of ael against Robert Hesbath and claimed the manor of E. and the advowson of the church, saving forty shillings of rent-service within the same manor etc. ; and she counted of the seisin of her grandfather, which descended to her father and from her father to herself.

Malberthorpe. As to a third part of this manor we tell you that her grandfather did not die seised. Ready etc. And as to the other two parts and the advowson etc., she hath no right of action, for in the time of this present king, in the term of St. Michael in the second year, a fine was levied before yourselves between Richard of Hesbath, of whose seisin she claimeth, and ourselves, whereby the aforesaid Richard granted and surrendered the two parts of the manor aforesaid, together with the advowson etc. to us and to our heirs, and bound himself and his heirs to warranty etc. ; and we ask judgment whether she can have action.

Scrop. Vous auez issi Maud qe est dedeinz age et ne seet ne ne puet tite fere en countre la fin einz veut auerer soun bref qe soun ael morust seisi etc.

Malm. La fin qe nous mettoms auant si est de record qe vostre ael se hosta de fee et de dreit tot deuēt en sa vie par le rendre qil fist en la court qe porte recorde et obliga li et ses heirs etc.

Toud. Nous ne pouns la fin conustre ne autre chose dire forsque auerer la possessioun nostre ael le quel vous refuset iugement.

Migg. Si vn estraunge nous enpledest de ceux tenementz nous la vocherioms a garrantie de deinz age par la fin etc. et ele serreit chace a nous garrantir deinz age par quei il semble par mesme la resun qele serra barre de accion par la ou ele mesmes demande.

Scrop. Si ele fust voche a garrantie le plee se targereit tant qe a soun age pur ceo ele ne put estre partie de pleder la garrantie qe est en le dreit auant soun age mes ensi nest ceo pas ou ele est par voie de accion par quei nest pas semblable.

Malm. Nous sumes auiz a sauer nostre tenaunce si mettoms auant la fin qest de recorde par la quele vostre auncestre se osta del dreit en sa vie etc. et demandoms iugement.

Scrop. Si ceo fust en assise de Nouele disseisine ou de Mordancestor ou enfant deinz age fust demandant et quiteclame ou autre fet mis auant en barre ou la quiteclame etc. serreit barre a home de plein age ele ne serreit qe evidence alassise a enfant de deinz age auxi semble il de ceste parte et demandoms iugement.

Hle. Lauerement qe vous tendet serreit a voider la fin qest de recorde qe serreit encountre statut.¹

Scrop. Si la fin tesmoinast le reuers de ceo qe nous tendoms de auerer ceo serreit respouns mes ore la fin ne tesmoigne pas la contrarie einz puet ensemble estre qe vne tiele fin se leua sur le rendre et il nauoit pas entre sur la fin ou puet estre qe nostre auncestre purchaca ceux tenementz pus la fin et deuia seisi et demandoms iugement.

Toud. Si la fin fust leuee sur bref de garrantie de chartre qe tesmoigna la seisine presedent la par cas nous ne auenderioms mie al auerement encountre la fin mes si ne sumes pas en le cas par quei etc.

¹ *Statutum de finibus*, cap. i (27 Edward I.).

Scrope. You have Maud here that is within age and knoweth not how, nor is competent, to establish her title against the fine ; but she wisheth to aver her writ that her grandfather did die seised etc.

Malberthorpe. The fine which we proffer is of record that your grandfather completely divested himself during his lifetime of the fee and right by the surrender which he made in a court which beareth record and that he bound himself and his heirs etc.

Toudeby. We cannot admit the fine or say aught else save aver the possession of our ancestor, which you refuse to allow. Judgment.

Miggeley. If a stranger were to implead us of these tenements we should vouch Maud to warranty within age by the fine etc. and she would be forced to warrant us, even though she be within age. For similar reasons, therefore, it seemeth that she will be barred from this action where she herself is claimant.

Scrope. If she were to be vouched to warranty the plea would stand over till her full age, for she cannot be a party to a plea of warranty, which is in the right, until she be of age ; but the circumstances are different here, for she is now bringing action. Therefore the cases are not similar.

Malberthorpe. Our object is to save our tenancy by putting forward the fine, which is of record, by which your ancestor divested himself of the right during his life etc. ; and we ask judgment.

Scrope. If this were an assise of novel disseisin or of mortdancestor where an infant under age was demandant, and a quitclaim or other deed were tendered in bar, though such quitclaim etc. would bar a man of full age it would only be evidence to go to the assize in the case of an infant within age ; and so it seems to be here, and we ask judgment.

Herle. The averment which you tender would go to the avoidance of the fine, which is of record ; and that would be against the statute.

Scrope. If the fine witnessed the contrary to that which we are offering to aver, what you say would be a good reply ; but here the fine doth not witness the contrary. It is quite possible that such a fine was levied, and that at the same time Robert never had entry under the fine ; or it may be that our ancestor repurchased these tenements subsequently to the fine, and died seised ; and we ask judgment.

Toud. If the fine had been levied under a writ of warranty of charter which witnessed precedent seisin, then, in such case, it may be that we could not have got to averment against the fine ; but we are not in such case here, wherefore etc.

Notes from the Record.

I.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 35, Herefordshire.

Matilda filia Stephani de Esebathe petit versus Robertum de Esebathe manerium de Esebathe cum pertinenciis exceptis quadraginta solidatis redditus in eodem manerio De quo Ricardus de Esebathe auus predictae Matilde cuius heres ipsa est fuit seiscitus in dominico suo vt de feodo die quo obiit etc. Et vnde dicit quod predictus Ricardus auus etc. fuit seiscitus de predicto manerio cum pertinenciis exceptis etc. in dominico suo vt de feodo tempore pacis tempore domini Regis nunc capiendo inde expletia ad valenciam etc. Et inde obiit seiscitus etc. Et de ipso Ricardo descendit feodum etc. cuidam Stephano vt filio et heredi etc. Et de ipso Stephano isti Matilde que nunc petit vt filia et heres. Et inde producit sectam etc.

Et Robertus per attornatum suum venit Et defendit Ius suum quando etc. Et quo ad terciam partem predictae manerii etc. bene defendit quod predictus Ricardus non obiit inde seiscitus in dominico suo vt de feodo etc. Et de hoc ponit se super patriam Et Matilda similiter etc. Ideo preceptum est vicecomiti quod venire faciat hic in octabis sancte Trinitatis xij. etc. per quos etc. Et qui nec etc. Quia tam etc.¹

Et quo ad duas partes eiusdem manerii cum pertinenciis etc. dicit quod predicta Matilda nichil clamare potest in predictis tenementis de seisina predicti Ricardi aui etc. Dicit enim quod alias in Curia domini Regis nunc coram Iusticiariis suis hic a die Pasche in xv. dies anno regni sui tercio leuauit quidam finis inter ipsum Robertum de Esebathe querentem et prefatum Ricardum de Esebathe auum etc. deforcientem de duabus partibus predictis cum pertinenciis etc. Scilicet quod predictus Ricardus recognouit predictas duas partes cum pertinenciis esse ius ipsius Roberti et illa ei reddidit in eadem Curia Habendas et Tenendas eidem Roberto et heredibus suis de capitalibus dominis feodi illius per seruicia etc. Et idem Ricardus concessit pro se et heredibus suis quod ipsi Warantizarent eidem Roberto et heredibus suis predictas duas partes cum pertinenciis contra omnes homines imperpetuum etc. Et profert partem predicti finis que hoc testatur etc. vnde dicit quod predicta Matilda teneretur ei predictas duas partes Warantizare per finem predictum tanquam heres predicti Ricardi aui sui si idem Robertus fuisset inde implicatus ab alio etc. Et petit iudicium si accio eidem Matilde competere possit etc.

Et Matilda dicit quod ipsa est infra etatem etc. et istud breue suum est

¹ Here a space which would contain as much matter as is recorded above has been left vacant on the roll.

Notes from the Record.

I.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 35, Herefordshire.

Maud, daughter of Stephen of Esebathe, claimeth from Robert of Esebathe the manor of Esebathe together with its appurtenances, saving forty shillings of rent service within the same manor, of which Richard of Esebathe, grandfather of the aforesaid Maud, whose heir Maud is, was seised in his demesne as of fee on the day on which he died. And touching this she saith that the aforesaid Richard, grandfather etc., was seised of the manor aforesaid and its appurtenances, saving etc., in his demesne as of fee in time of peace in the time of the King that now is, taking thence esplees to the value etc. And thereof he died seised etc. And from this Richard the fee etc. descended to a certain Stephen as son and heir etc. And from this Stephen to this Maud that now claimeth as daughter and heir. And thereof she produceth suit etc.

And Robert by his attorney cometh and doth deny her right when etc. And as to a third part of the aforesaid manor etc. he doth deny that the aforesaid Richard died seised in his demesne as of fee etc. And of this he doth put himself upon the country. And Maud doth likewise. So the Sheriff is charged that he make come here in the octaves of the Holy Trinity twelve etc. through whom etc. And who are neither etc. Because both etc.

And as to two parts of the same manor with its appurtenances he doth say that the aforesaid Maud cannot claim aught in the aforesaid tenements of the seisin of the aforesaid Richard, grandfather etc. For he saith that at another time in the Court of our lord the King that now is before his Justices here in the quindenes of Easter in the third year of his reign a certain fine¹ was levied between this Robert of Esebathe, complainant, and the aforesaid Richard of Esebathe, grandfather etc., deforcient, in respect of the two parts aforesaid, together with the appurtenances etc. To wit, to the effect that the aforesaid Richard recognised the aforesaid two parts together with the appurtenances to be the right of that same Robert and surrendered them to him in the same Court to have and to hold to the same Robert and his heirs of the chief lords of that fee by the services etc. And the same Richard undertook for himself and his heirs that they would warrant the aforesaid two parts together with the appurtenances to the same Robert and his heirs against all men for ever. And he doth proffer part of the aforesaid fine which doth witness this etc.; in respect of which he saith that the aforesaid Maud would be bound to warrant to him the aforesaid two parts under the aforesaid fine, as heir of the aforesaid Richard her grandfather, if this same Robert were impleaded thereof by any etc. And he doth ask judgment whether to this same Maud any right of action etc. can accrue.

And Maud saith that she is within age etc. And that this writ is a

¹ See the following Note from the Record.

quoddam breue de possessione ad quod breue ei sufficit verificare quod predictus auus suus obiit seisisus etc. et non potest ad aliquem finem seu aliud factum respondere dum ipsa est infra etatem etc. nec predictus finis probat quod predictus auus non obiit seisisus etc. Et ex quo competit ei breue predictum infra etatem etc. et ipsa parata sic verificare quod ipsa est heres predicti aui sui propinquior qui inde obiit seisisus in dominico suo vt de feodo petit Iudicium si ipsa sic infra etatem existens ad predictum finem debeat seu nunc habeat respondere etc.

Dies datus eis de audiendo Iudicio suo hic in octabis sancte Trinitatis in statu quo nunc saluis partibus racionibus suis etc. Ad quem diem predictus Robertus fecit se essonari versus eam de predicto placito. Et habuit diem per essonium suum hic in Crastino Animarum etc. Postea ad diem venit partes predictae per attornatos suos Et datum est dies hic a die Pasche in xv. dies prece parcium etc. saluis racionibus suis etc.¹

II.

Feet of Fines, Case 82, File 28, No. 24.

Hoc est finalis concordia facta in Curia domini Regis apud Westmonasterium a die Pasche in quindecim dies Anno Regni Regis Edwardi filii Regis Edwardi tercio Coram Willelmo de Bereford Lamberto de Trikyngham Heruico de Stanton Iohanne de Bensted et Henrico Le Scrop Iusticiariis et aliis domini Regis fidelibus tunc ibi presentibus Inter Robertum de Esebathe querentem per Iohannem de Bosco positum Loco suo ad Lucrandum vel perdendum et Ricardum de Esebathe deforcientem de duabus partibus Manerii de Esebathe cum pertinenciis et aduocacione ecclesie eiusdem Manerii vnde placitum conuencionis summonitum fuit inter eos in eadem Curia Scilicet quod predictus Ricardus recognovit predictas duas partes et aduocacionem predictam cum pertinenciis esse Ius ipsius Roberti Et illa ei reddidit in eadem Curia Habenda et tenenda eidem Roberto et heredibus suis de Capitalibus dominis feodi illius per seruicia que ad illas duas partes et aduocacionem predictam pertinent in perpetuum. Et preterea idem Ricardus concessit pro se et heredibus suis quod ipsi Warantizabunt eidem Roberto et heredibus suis predictas duas partes et aduocacionem predictam cum pertinenciis contra omnes homines in perpetuum. Et pro hac recognitione reddicione Warancia fine et concordia idem Robertus dedit predicto Ricardo Centum libras sterlingorum.

¹ Nothing further has been recorded.

certain possessory writ, to which writ it sufficeth her to aver that her aforesaid grandfather did die seised etc. ; and she cannot, while she is within age etc., answer to any fine or other deed ; neither doth the aforesaid fine prove that her aforesaid grandfather did not die seised etc. And for these reasons it is competent to her to bring this writ within age etc. ; and she being thus ready to aver that she is the nearest heir of her grandfather aforesaid who died seised thereof in his demense as of fee asketh judgment whether she, being within age, ought to or now must answer etc. the aforesaid fine.

A day is given them to hear their judgment here in the octaves of the Holy Trinity in the same condition in which they now are, the right to stating their arguments being reserved to the parties. On which day the aforesaid Robert made himself to be essoined against Maud of the aforesaid plea. And he had a day here for his essoin on the morrow¹ of All Souls. Afterwards on that day the parties aforesaid came by their attornies. And a day was given them on the quindene of Easter by the prayer of the parties etc. their arguments being saved etc.

II.

Feet of Fines, Case 82, File 28, No. 24.

This is the final agreement made in the Court of the lord King at Westminster in the quindenens of Easter in the third year of the reign of King Edward, son of King Edward, before William of Bereford, Lambert of Trikingham, Hervey of Stanton, John of Bensted and Harry the Scrop, Justices, and other faithful subjects of the lord King then present, Between Robert of Esebathe, complainant, by John of the Wood, put in his place to win or lose, and Richard of Esebathe, deforciant, in respect of two parts of the manor of Esebathe, with the appurtenances, and the advowson of the church of the same manor, touching which a plea of agreement hath been summoned between them in this same court ; to wit, that the aforesaid Richard admitted that the aforesaid two parts and the aforesaid advowson, with the appurtenances, are the right of the said Robert ; and he surrendered them to him in the same Court, to have and to hold to the same Robert and his heirs of the chief lords of that fee by the services which pertain to those two parts and the aforesaid advowson for ever. And the same Richard did further grant for himself and his heirs that they will warrant to the same Robert and to his heirs the aforesaid two parts and the aforesaid advowson with the appurtenances against all men for ever. And in consideration of this same recognition, surrender, warranty, fine and agreement, the same Robert gave to the aforesaid Richard a hundred pounds sterling.

¹ November 3.

5. POTONE v. BRUN AND BAILLIF.¹I.²

Replegiare fundu sur statut de Aueriis caruce ou le pleintif dit
 qe il prist ses boefs sauer .iiij. le defendant dit qil prist nul boefs de sa
 carue einz .ijj. [*sic*] vaches prest etc. et a tiel auerement fust le pleintif
 chace.

Vn A. porta son bref sur³ statut de aueriis caruce et counta qe
 com de commune consail etc. mesme cesti Roger etc. et quidem dicunt
 Roger qe la est saunz dire mesme cesti Roger etc. atort prist les auers
 de sa carue nomement .iiij.⁴ boefs.

*Denom.*⁵ Nous ne prymes mye les boefs de sa carue eynz .iiij. vaches
 prest etc.

Toud. Nostre bref voet de aueriis caruce et nous voloms auerer
 qe vous pristes les bestes de nostre carue ⁶nomement boefs etc.⁷ a qi
 vous ne respounez nient iugement etc.⁸

Denom. ⁹Vous auez counte qe nous primes les bestes de vostre
 carue nomement boefs¹⁰ qe nous ne primes pas boefs eynz .iiij. vaches
 prest etc.

Toud. Si vous voillez estre ressu¹¹ a lauerement couent qe vous
 dites ¹²contrariant a nostre pleint ¹³et qe vous seiez en la negatif sauer¹⁴
 qe vous ne pristes poynt nos bestes saunz plus dire et ¹⁵dont nous¹⁶
 resceueroms mes ceo qe vous dites qe vous pristes nos vaches cest
 affirmatif et hors de ceo plai a qi cest bref nest garrant iugement etc.

Denom. Vous auez counte des autres prises qe ne furent feites et
 pur auer retorne ¹⁷des vaches¹⁸ nous dioms qe nous primes vaches etc.

Scrop. Vous dites qe vous ne pristes poynt nos boefs et dites qe
 [vous] pristes nos vaches et vous ne assignez nule cause par qi vous¹⁹
 auowez iugement.

Berreford. Si lenqeste die qil ne prist poynt vos boefs de vostre
 carue mes vos .iiij. vaches qi prendrez vous par vostre bref quasi diceret
 nichil et il respounde²⁰ a vostre counte ²¹mes meynte gent du pais²²
 mettent vaches en²³ carue par default de boefs et si vostre cas fut tiel

¹ Reported by B, L, M, P, T, Q, X. Names of the parties from the record.

² Text of (I) from P, collated with B, L, M, T and Q. Headnote from B. ³ de, M.

⁴ .viiij., T. ⁵ *Toud.*, T, Q, which have *Toud.* for *Denom.* and *vice versa* throughout the report.

⁶⁻⁷ Omitted by B, L, M, T, Q. ⁷⁻⁸ From L, M, T, Q. B has the same, with the difference of *prest* for *iugement*. ⁹⁻¹⁰ Supplied from B, L, M, T, Q. T adds .viiij. before boefs.

¹¹ Supplied from B, Q. ¹²⁻¹⁴ chose qe soit contrariaunt a nostre pleynte et seit la negatif sauer, L.

¹³⁻¹⁴ en la negatif, Q, T. ¹⁴ B omits. ¹⁵⁻¹⁶ cel auerement, T.

¹⁷⁻¹⁸ B and Q omit. ¹⁹ ne, B, Q. ²⁰ ad respoudu, B. ²¹⁻²² et en meynt pays gentz, B, Q. ²²⁻²³ menent vaches a, T.

5. POTTON *v.* BRUN AND BAILIFF.

I.

Replevin founded on the statute¹ respecting beasts of the plough, where the plaintiff said that the defendant took his bullocks, to wit, four; and the defendant said that he took no bullocks of the plough, but four cows. Ready etc. And the plaintiff was forced to allow this averment.

One A. brought his writ on the statute relating to beasts of the plough and counted that while the common council etc. this same Roger etc.—and some say ‘Roger that is there’ instead of ‘this same Roger etc.’²—wrongfully took the beasts of his plough, to wit, four bullocks.

Denham. We did not take the bullocks of his plough, but four cows. Ready etc.

Toudeby. Our writ runs ‘of the beasts of the plough,’ and we will aver that you took the beasts of our plough, to wit, bullocks etc.; and to this you make no answer. Judgment etc.

Denham. You have counted that we took the beasts of your plough, to wit, bullocks. Ready etc. that we did not take bullocks, but four cows.

Toudeby. If you want to be received to the averment you must traverse our plaint, and deny it; that is you must say that you did not take our beasts, without saying more; and then we will accept that; but what you say, that you took our cows, is an affirmation and outside this plea, and is no answer to this writ. Judgment etc.

Denham. You have counted of other seizures which were not made; and we have said that we took cows etc. in order that we may have return of the cows.

Scrope. You say that you did not take our bullocks and say that you took our cows; and you assign no cause on which you avow. Judgment.

BEREFORD C.J. If the inquest find that he did not take your bullocks of your plough but your four cows, what will you get by your writ?—*inferring that he would get nothing*—and he has an answer to your counting. There are many folk of the neighbourhood who put cows to the plough for want of bullocks, and if this be your case

¹ Beasts of the plough were exempt by the common law from distress, so long as other distress was available; and, later, by the Statute *De districcione Scaccarii*, of uncertain date, but probably of 51 Hen. III. See *Statutes of the Realm*, I. p. 197.

² The scribe probably means that this is an alternative form for beginning the count.

vous purrez¹ auer dit les² bestes de vostre carue nomement³ vaches et si serroit vostre counte assetz bon.

Et pus lauerement fut resceu qil ne prist poynt les boefs de sa carue eynz .iiij. vaches.

Et alii e contra.

II.⁴

de aueriis carucariis

En bref de trespas de aueriis carucariis le pleintif counta de .iiij. boefs.

Den. Nous primes nulls boefs de vostre carue enz .iiij. vaches.

Toud. Nostre bref velt aueria carucaria sanz mettre en certeyn et a nostre bref couent respoudre.

Berr. Si les vaches furent en vostre carue donques puriez auer counte bon counte qil prist vos vaches.

Toud. Ceo qil parle de vaches est sanz garrantie.

Den. Ceo dioms pur retorne qar vous auez la deliuerance des vaches par ceo bref.

Scrop. Retorne nauerez pas sanz auouer.

Pus *Den.* Nous ne primes pas vos boefs enz .iiij. vaches prest etc. alii e contra.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 50, Kent.

Mauricius le Brun et Simon le Baillif de Beghenham attachiati fuerunt ad respondendum Iohanni de Potone de placito quare cum de communi consilio regni Regis statutum sit quod nullus de eodem regno distringatur per aueria Carucarum suarum vel per oues suas per debita Regis aut aliorum vel alia quacunque occasione per balliuos Regis aut aliorum quamdiu alia habeat aueria per que rationabilis districcio super ipsum fieri possit pro debitis illis leuandis exceptis dumtaxat aueriis illis que in dampno alicuius inuenta secundum legem et consuetudinem regni Regis imparcari contigerit iidem Mauricius et Simon aueria ipsius Iohannis de Caruca sua apud Beghenham contra formam statuti predicti ceperunt et imparcauerunt et ea diu imparcata detinuerunt contra legem et consuetudinem regni Regis et contra pacem etc. Et vnde idem Iohannes per Robertum Malemeyns attornatum suum queritur quod predicti Mauricius et Simon die Martis proxima post festum sancte Margarete virginis anno regni domini Regis nunc quinto apud

¹ purrietz, B, Q. ² vos, B. ³ T adds .iiij. ⁴ Text of (II) from X.

you could have said 'the beasts of your plough, to wit, cows,' and then your counting would be sufficiently good.

And afterwards the defendant's averment that he did not take the bullocks of the plaintiff's plough but four cows was received.

And the other side joined issue.

II.

Of beasts of the plough.

In a writ of trespass concerning beasts of the plough the plaintiff counted of four bullocks.

Denham. We took no bullocks of your plough, but four cows.

Toudeby. Our writ says 'beasts of the plough,' without describing them certainly, and you must answer our writ.

BEREFORD C.J. If you had cows in your plough, then it was open to you to have counted a good count that he took your cows.

Toudeby. What he says about cows is not relevant to the writ.

Denham. We say it that we may get return, for you have deliverance of the cows by this writ.

Scrope. You will not get return without avowing.

Denham afterwards said: We did not take your bullocks, but four cows. Ready etc.

And the other side joined issue.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 50, Kent.

Maurice the Brun and Simon the Bailiff of Beckenham were attached to answer John of Potton why, seeing that it had been enacted by the King's Common Council of the Realm that none of the same Realm should be distrained by the beasts of his ploughs or by his sheep for debts due to the King or to others or for any other cause by the bailiffs of the King or of others so long as he had other cattle by which reasonable distress could be made upon him for levying such debts, excepting always such beasts as being found endamaging anyone shall be imparked according to the law and custom of the King's Realm, they the said Maurice and Simon the beasts of the plough of that same John at Beckenham did take and impark against the form of the Statute aforesaid, and them did for a long time detain imparked against the law and custom of the King's Realm and against the peace etc. In respect of which the same John doth by Robert Malemeyns, his attorney, make complaint that the aforesaid Maurice and Simon on the Wednesday next after the Feast ¹ of St. Margaret the Virgin in the fifth year of the

¹ July 20.

Beghenham in quodam loco qui vocatur smetheslond ceperunt octo boues ipsius Iohannis de Caruca sua et eos diu imparcata detinuerunt contra legem et consuetudinem regni Regis et contra pacem etc. vnde dicit quod deterioratus est et dampnum habet ad valenciam decem librarum Et inde producit sectam etc.

Et Mauricius et Simon per Iohannem de Skeltone attornatum suum veniunt Et defendunt vim et iniuriam quando etc. Et bene defendunt quod ipsi non ceperunt aliquos boues predicti Iohannis Dicunt reuera quod ipsi ceperunt quatuor vaccas ipsius Iohannis et non predictos boues sicut idem Iohannes queritur Et de hoc ponunt se super patriam. Et Iohannes similiter. Ideo preceptum est vicecomiti quod venire faciat hic in octabis Sancte Trinitatis xij. etc. per quos etc. Et qui nec etc. Quia tam etc.¹

6. BEUVEYSYN *v.* PORTEBREF.²I.³

Dowere ou tenementz furent lessez a vn homme a terme des anz et par vne chartre fet au termer en sa seisine puis aliena a vn homme et a soun fil et a les heirs le fil apres le descens celui qe aliena sa femme porta soun bref de dowere.

Henri de porteueysin et sara sa femme porterunt lour bref de dowere vers William porteburi et demanda [*sic*] la terce partie etc.

Wilbi. Soun baroun de qi dowement etc. ne fust onques seisi apres les esposailles cum de fee issi qe dower la puet prest etc.

Et alii e contra lenqueste vient.

Pass. en euidence delenqueste Osberne Giffard piere Osberne baroun Sara de qi vouement [*sic*] etc. bailla ceux maners ensemblement oue autres maners a E. son fitz agarder a terme de dis aunz rendant ali par an etc. Et qil ne remuast prouost ne autre home de offiz et sauereit tout lescosz des maners et du remenant des issues du maner rendre acounte a soun reuenir de outre mer et ceo li bailla par vn endentoure entre eus fete et lendentoure demort vers autres et assigna la cause pur quei il ne le pout auer et veet issi le transescrit de cel endentoure.

Lenqueste fust charge si Osberne baroun ceste femme auoit fee etc. sur tiel endentoure et le transescrit a eus baille de cel endentoure qe vindrent et diseient qe Osberne entra par cele endentoure sulum ceo qil auoit dist.

¹ Nothing more has been recorded.

² Reported by *R* and *Y*.

³ Text of (I) from *R*.

reign of the King that now is at Beckenham in a certain place known as Smithsland eight bullocks of the plough, the property of the said John, did take, and them imparked did detain for a long time against the law and custom of the King's realm and against the peace etc.; whereby he saith that he suffered loss and had damage to the amount of ten pounds. And thereof he produceth suit etc.

And Maurice and Simon, by John of Skelton their attorney, come and deny force and injury when etc. And they deny that they took any bullocks of the aforesaid John. They say in sooth that they took four cows belonging to the said John and not the bullocks aforesaid as the same John doth complain. And of this they do put themselves upon the country. And John doth likewise. So the Sheriff is charged that he make come here in the octaves of the Holy Trinity twelve etc. through whom etc. And who are neither etc. Because both etc.

6. BEUVEYSIN *v.* PORTEBREF.

I.

Writ of dower where tenements were leased to a man for a term of years and by a charter made to the termor while he was seised. He subsequently alienated to a man and his son and the heirs of the son. After the alienor's death his wife brought her writ of dower.

Harry of Porteveysin and Sarah his wife brought their writ of dower against William Portbury and claimed the third part etc.

Willoughby. Her husband, of whose endowment etc., was never seised after the espousals as of fee so that he could dower her. Ready etc.

And the other side joined issue. The inquest cometh.

Passeley, in addressing the inquest: Osbert Giffard, father of Osbert, Sarah's husband, of whose endowment she is claiming, bailed these manors, together with other manors in E., to his son, to keep them for a term of ten years, paying to him yearly etc. And [it was provided] that he should remove neither reeve nor any other from his office, that he should keep an account of all the expenses of the manors, and render an account to him [*sc.* his father] of the residue of the issues of the manor upon his return from overseas. And this he bailed to him by an indenture made between them, and the indenture remaineth in the possession of the other side—and he gave the reason why he could not have it—and see here the transcript of that indenture.

The Inquest was charged to find whether Osbert, the husband of this woman, had fee etc. by virtue of that indenture; and the transcript of that indenture was handed to them; and they came and said that Osbert entered under that indenture according to what he had said.

Ston. Sire ore vous dioms nous ke Osberne le pere en sa seisine li fist ceste chartre et ensi auoit il fee.

Pass. Si nule chartre fust fete ceo fust qant lescrit fust fet et lentre qil aueit ceo fust par lescrit.

Berr. Vous nous dirret sil fist ceste chartre se fist [*sic*] pus cel escrit ou a vne foez et sil entra sulum la purporte de lescrit.

Lenqueste dist qil entra sulum la purporte de lescrit mes il ne saueit qant la chartre fust fete.

Berr. Vous nous dirret sil fust seisi cum de fee et vous nous dirret qant la chartre fust fete.

Lenqueste en sa seisine pus les esposailles.

Aueient de iour en autre de oier lour iugement pus William vers qi le bref fust porte fust demaunde et fist defaute survint soun fitz et dist qil nauoit qe terme de vie et le fee et le dreit est a li et vient auant iugement rendu et pria estre receu etc. et mist auant chartre qe tesmoigna qe les tenementz furunt donez a William porteburi et a William soun fitz e a ses heirs.

Toud. Lenqueste est passe a quele enqueste William fust partie et prioms iugement sur uerdist delenqueste.

Denum. Le fee et le dreit demurt en nostre persone sulum la purporte de la chartre et il ad feintement defendu le plai et ceo piert qil pout auer abatu le bref etc.

Toud. Si bref de dowere fust portee vers gardein et lenqueste fust passe encountre li le heir ne serreit pas receu etc. nent plus par de eza etc.

Pass. En ceo cas illi ad certain remedie ordine mes ci cesti ne fust receu il serreit sanz remedie qe la ou le dreit remanit entierement en sa persone sil fust oute il ne recouereit si noun la moite *Item* apres la mort la femme le recouerir serreit a celi vers qi le recouerer se fist et nent a li en qi le dreit repose.

Toud. Sil fust receu ceo serreit en abatement de nostre bref *Estre ceo* nous ne demandoms qe dowere qe ne chiet pas en desheritesoun et ceo Iour et Iour de lenqueste passe serrunt accountes pur vn iour *Item*

Stonore. Sir, we tell you that Osbert the father made this charter to him during his ¹ seisin, and so he had the fee.

Passeley. If any charter were made it was made when the writing was made, and what entry he had was by the writing.

BEREFORD C.J. You will tell us whether he [*sc.* the father] made this charter after this writing, or at the same time, and whether he [*sc.* the son] entered according to the purport of the writing.

The Inquest said that he entered according to the purport of the writing, but they did not know when the charter was made.

BEREFORD C.J. You will tell us whether he was seised as of fee, and you will tell us when the charter was made.

The Inquest. During his seisin, after the espousals.

They had from one day to another to hear their judgment. Afterwards William, against whom the writ was brought, was called and he did not appear. His son intervened and said that he [*sc.* his father] had naught but a life term, and that the fee and the right are in himself, and that he cometh before judgment given; and he prayed to be received etc.; and he made *profert* of a charter which witnessed that the tenements were given to William Portbury and to William, his son, and to his heirs.

Toudeby. The inquest hath passed. William was a party to that inquest, and we ask judgment on the verdict of the inquest.

Denham. The fee and the right remain in our person according to the purport of the charter, and he ² hath made only a sham defence, while it appears that he might have abated the writ.

Toudeby. If a writ of dower should be brought against a guardian and the inquest should have passed against him, the heir would not be received etc.; no more will he in these circumstances etc.

Passeley. In that case a certain remedy hath been provided,³ but if this man should not be received he would be without remedy; for though the right remain entirely in his person, yet, if he should be ejected, he would recover the moiety only. Further, after the wife's death the recovery would be to him against whom the recovery was gotten, and not to him in whom the right reposeth.

Toudeby. If he were to be received, that would be in abatement of our writ. Further than this, we are claiming dower only, and this doth not go in disherison, but will be accounted for one day when to-day and the day when the inquest passed will be reckoned as one day.⁴ Again

¹ *Sc.* the son's.

² *Sc.* William, the father.

³ By the Statute of Westminster II. cap. iv, he had an action on attaining

full age.

⁴ There had been an interval. See the Note from the Record.

cesti bref gist vers tenant a terme des anz et sil pledast a lenqueste et lenqueste passast etc. et pus fist defaute celi a qi le dreit est ne serreit pas receu nent plus par de cza.

Berr. Vous dites talent Car si lestat le terme [*sic*] fust conu a la court le bref sabatereit saunz delay.

Scrop. Sil dust estre receu ceo serreit par commune ley ou par statute mes commune ley ne les eyde pas ne statut qe les tenementz ne sont pas en point destre perduz par defaute ne le tenant nest pas arendre ne il ne pussont assigner colusion ne feint pleder car cest est en autre cas cum piert en lestatut par quei il ne sei pussont eider par statut ne par commune lei *Et dautre part* si home serreit receu en tiel cas ia ne auendereit home a iugement sur verdist de lenqueste qe qant lenqueste est passe ieo frai moun garson mettre auant vne tiele chartre.

Denum. Ceo est vn aunciene fete qest mis auant en court il ad certain lay ordine.

Berr. Nous veoms meschef de vne part et dautre.

II.¹

Henri Beauveisin et Sarre sa femme porteront lour bref de dowere vers William Portbref del dowement Wauter Mountfort iadis Baroun Sarre.

Den. Wauter ne fust unkes seisi qe dowere la pout prest etc.

Et alii contrarium.

La Jurre dit qe Ioan de Monfort lessa ceux tenementz a Wauter son fiz a terme de .viij. anz et lui fist chartre a lui et ses heirs lendente et la chartre furent mis en Court.

Bereford. Qant fust la chartre fete qar si la chartre fust fete oue lendenture rien ne acrust par la chartre mes si la chartre fut fete en la seisine Wauter par tiele chartre fee et droit lui acrust pur ceo dites nous ceo.

La Jurre. Apres la liuerie etc. et en sa seisine etc.

Et pus William Portbref fist defaute et suruint William le fiz William Portbref et dit qe les tenementz dount ele demande dowere furent en la seisine vn Ioan de C. qe hors de sa seisine dona ces tenementz a William

¹ Text of (II) from Y.

this writ lieth against a tenant for a term of years, and if he were to plead to the inquest and the inquest passed etc. and he then made default, he in whom the right repositeth would not be received. No more will he be here.

BEREFORD C.J. You are talking at random, for if the estate of the termor were admitted to the Court, the writ would straightway be abated.

Scrope. If he were received, he would be received either under the common law or by statute; but the common law doth not help them any more than the statute¹ doth, for the tenements are not in danger of being lost through default, nor is the tenant going to surrender them; and they cannot assign collusion or a sham defence. On the other hand, the circumstances here are different from those contemplated by the statute, and so they can get no assistance either from the statute or the common law. Moreover, if people are to be received in these circumstances, no one in future will ever get judgment on a verdict of the inquest, for when the inquest hath passed I shall make my servant produce some charter or other.

Denham. This deed that is tendered in Court is an ancient one, and the law applicable to it is certain.

BEREFORD C.J. We see some hardship on both sides.

II.

Harry Beauveisin and Sarah his wife brought their writ of dower against William Portbref of the endowment of Walter Mountfort that was aforetime husband of Sarah.

Denham. Walter was never seised so that he could dower her. Ready etc. And the other side joined issue.

The Jury said that John of Montfort leased these tenements to his son Walter for a term of eight years, and made a charter to him and to his heirs. And the indenture and the charter were tendered in Court.

BEREFORD C.J. When was the charter made? For if the charter were made at the same time as the indenture naught would accrue to him in virtue of the charter. But if the charter were made during Walter's seisin, then, by virtue of such a charter, fee and right would accrue to him. Wherefore resolve us of this.

The Jury. After the livery etc. and during Walter's seisin.

And William Portbref did afterwards make default, and William the son of William Portbref did intervene and say that the tenements whereout Sarah doth claim dower were in the seisin of one John of C.,

¹ Stat. Westm. II. c. 4.

Portbref et a William son fiz et a les heirs William le fiz et iij. altres etc. Et qe le fee et le droit repose en sa persone et prie estre resceu a defendre sun droit et mist auant chartre qe ceo tesmoigna.

Toudeby. Vous nestes mie en cas de statut qe suppose rendre ou defaute apres defaute mes issi apres verdit de vne enqueste et sur ceo prioms notres iugement.

Willubi. Nous deuom estre resce upur le feint pleder le tenant et pur la collusion entre lui et le demandant qar il poet auer abatu le bref par le ioint feffe etc.

Scrop. Ou vous deuez estre eide par la comune lei ou par statut a la comune lei nestes vous mie aide. Moustrez donqe statut.

Will. Nous deuoms estre resceu par labsence le tenant.

Scrope. Vous nestes mie en le cas.

Passeley. Si ele rescouerist cest dowere vers William qe nad qe fraunc tenement nous qe auom le droit serrioms barre de la reuersion a touz Iours qe serroit encontre lei etc.

Touth. nous ne pledoms mie ore reuersion einz prioms seisine de nostre dowere apres verdit denqueste.

Passeley. A la comune lei celui en qi le droit reposa fut resceu a defendre son droit par la defaute le tenant et par qi ne serroit il ore resceu etc.

Huntingd. Greindre reson est qil soit resceu qe les pleez soient multipliez.

Nota quod omnes Iusticiarii fuerunt in opinione quod predictus Willelmus reciperetur ad ius defendendum etc. Et postea super hoc dies datus est eis in tres septimanas Pasche in eodem statu etc.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 73, Somerset.

Henri Beueysyn et Sarra vxor eius alias scilicet a die sancti Hillarii in quindecim dies anno Regis nunc quarto per Isaac de Vpton attornatum suum petierunt versus Willelmum Portebref terciam partem quatuor messuagiorum sex carucatarum terre sexaginta acrarum prati sexaginta acrarum bosci et quinquaginta soliditarum redditus cum pertinenciis in Teumes et Elme vt dotem ipsius Sarre ex dotacione Osberti filii Osberti Giffard quondam primi viri ipsius Sarre. Et Willelmus per Iohannem de Frome venit. Et dixit quod predicti Henricus et Sarra non debent inde dotem habere quia dixit

who out of his seisin gave these tenements to William Portbref and to William his son and to the heirs of William his son and to three others etc. and that the fee and the right do repose in his own person ; and he doth pray to be received to defend his right. And he tendered a charter witnessing this.

Toudeby. You do not come within the statute, which supposeth surrender or default after default ; but here [you come] after the verdict of an inquest ; and on this we ask for our judgment.

Willoughby. We ought to be received by reason of the sham defence of the tenant and the collusion between him and the demandant ; for the tenant might have abated the writ on the plea of jointly feoffed.

Scrope. You must claim aid either by the common law or under a statute. The common law giveth you no aid. Show us, then, your statute.

Willoughby. We ought to be received by reason of the absence of the tenant.

Scrope. You are not in the prescribed conditions.

Passeley. If Sarah should recover this dower against William that hath a freehold only, we, that have the right, would be barred from the reversion for ever, which would be against the law etc.

Toudeby. We are not pleading now about the reversion, but we are asking for seisin of our dower after verdict of the inquest.

Passeley. By the common law he in whom the right reposed was received to defend his right on the default of the tenant ; and why should he not now be received etc. ?

Huntingdon. Greater reason is there that he should be received than that pleas should be multiplied.

Note that all the Justices were of opinion that the aforesaid William should be received to defend his right etc. And upon this a day was afterwards given to the parties three weeks after Easter, in the same condition etc.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 73, Somerset.

Harry Beuveysyn and Sarah his wife at another time, to wit, on the quindene of St. Hilary in the fourth year of the King that now is, by Isaac of Upton their attorney, claimed from William Portebref a third part of four messuages, of six carucates of land, of sixty acres of meadow, of sixty acres of woodland and of fifty shillings of rent, together with the appurtenances, in Theynes and Elm, as the dower of the said Sarah by the endowment of Osbert the son of Osbert Giffard, that was the first husband of the said Sarah. And William came by John of Frome. And he said that the aforesaid Harry and Sarah ought not to have dower therefrom, for he

Note from the Record—continued.

quod predictus Osbertus quondam vir etc. die quo ipsam desponsauit nec vnquam postea fuit seiscitus de predictis terris vt de feodo Ita quod ipsam inde dotare potuit etc. Et de hoc posuit se super patriam. Et Henricus et Sarra similiter. Ita quod tunc preceptum fuit vicecomiti quod venire faceret hic a die Pasche in tres Septimanas proximo sequentes .xij. etc. per quos etc. Et qui nec etc. ad recognizandum etc. Quia tam etc. Et continuato hinc inde processu inter eos vsque ad hunc diem scilicet a die sancti Hillarii in quindecim dies modo veniunt predicti Henricus et Sarra per attornatum suum. Et similiter predictus Willelmus venit in propria persona sua. Et similiter Iurati de consensu parcium electi qui dicunt super sacramentum suum quod predictus Osbertus Giffard pater predicti Osberti quondam viri ipsius Sarre tradidit eidem Osberto filio eius vnum messuagium duas carucatas terre et circiter quindecim acras prati quadraginta acras bosci et quinquaginta solidatas redditus cum pertinenciis in Teumes et Elme tantum vna cum aliis tenementis per formam cuiusdam scripti inde inter eos indentati cuius transcriptum liberauerunt Curie hic in dicendo veredictum suum in hec verba. Omnibus Christi fidelibus ad quos presens peruenerit Osbertus Giffard filius domini Osberti Giffard salutem in domino. Nouerit vniversitas vestra me recepisse a domino Osberto patre meo in Custodia tanquam sit vltra Mare per vnum factum factum inter me et ipsum manerium de Dadyngtone et de Wynterburne et de Stanlake et de Astwelle et de Steynford et de Foxcote et de Teumes et de Loterford et de Stenford si est adhuc quietum cum omnibus suis pertinenciis vsque dominus meus Osbertus Giffard reuersus in patria. Reddendo ei annuatim predicto domino Osberto patri meo tanquam sit vltra mare pro terris predictis Septingentas Libras Sterlingorum de bona moneta et fideli. Soluendo eidem domino Osberto patri meo vel eius certis attornatis literas sua[s] patentes deferentibus in Curia de Wynterburne Houtone vel in Curia de Foxcote terminis subscriptis videlicet in festo Purificacionis beate Marie trescentas et quinquaginta libras. Et in festo Natiuitatis beate Iohannis Baptiste trescentas quinquaginta Libras sine ulteriore dilacione. Et ego volo et concedo quod predictus Osbertus pater meus possit ingredi et seisinam capere ad quamlibet horam se ipso placente sine omni nocumento mei vel aliquorum per me et omnia scripta inter nos facta quod non possunt michi valere nec domino Osberto patri [sic] meo nocere. Et seisinam capiat in omnibus terris et tenementis in quibuscunque locis predictis Osbertus pater meus me fecit custodem. Iterum volo et concedo quod omnia blada et alia catalla super terris inuenta sint predicto domino Osberto Giffard patri meo salua. Insuper obligauit me fide mea et sacramento quod non dabo nec vendam nec ullo modo alienabo acras nec dimidias nec terras nec tenementa nec curtilagium nec aliquod

Note from the Record—*continued.*

said that the aforesaid Osbert that was aforetime etc. was not on the day when he married Sarah nor on any subsequent day seised of the lands aforesaid as of fee so that he could endow her thereout etc. And of this he did put himself upon the country. And Harry and Sarah did likewise. So that the Sheriff was then charged that he make come here three weeks after Easter then next following twelve etc. through whom etc., who were neither etc. to make recognition etc.; because both etc. And process being continued between the parties from that time to this day, to wit, to the quindenes of St. Hilary, the aforesaid Harry and Sarah now come by their attorney. And the aforesaid William doth likewise come in person. And likewise come the Jurors, who, being chosen by consent of the parties, upon their oath do say that the aforesaid Osbert Giffard, father of the aforesaid Osbert that was aforetime husband of the said Sarah, did deliver to the same Osbert his son a messuage, two carucates of land, and about fifteen acres of meadow, forty acres of woodland and fifty shillings of rent, together with the appurtenances, in Theynes and Elm, only, together with certain other tenements, by virtue of a certain writing indented thereof between them, a transcript whereof they ¹ delivered to the Court here, when returning their verdict, in these words. To all Christ's faithful folk to whom these presents shall come Osbert Giffard, son of the lord Osbert Giffard, sendeth greeting in the Lord. Ye are all to know that I have received from the lord Osbert my father by a deed made between me and him to have in my wardship what time he be oversea the manors of Dodyngton and of Winterborne and of Stanlake and of Astwell and of Steynford and of Foxcote and of Theynes and of Loterford, and of Stenford, if it be yet quit, together with all their appurtenances, until my lord Osbert Giffard return home, in consideration of an annual payment to the aforesaid lord Osbert my father for the lands aforesaid while he shall be beyond sea of seven hundred pounds sterling of good and true money, to be paid to the same lord Osbert my father or to his certain attorneys presenting his letters patent in the court of Winterbourne-Houghton or in the court of Foxcote at the terms underwritten, to wit, on the Feast of the Purification of Blessed Mary ² three hundred and fifty pounds, and on the Feast of the Nativity of Blessed John Baptist ³ three hundred and fifty pounds, without any postponement. And I will and grant that the aforesaid Osbert my father be at liberty to enter and take seisin at any hour he please without any detriment to me or to any through me, and that none of the writings made between us shall be interpreted to my advantage or to the detriment of Osbert my father. And Osbert my father is to take seisin in all the lands and tenements in what places soever of which he hath made me guardian. And I further will and grant that all growing crops and other chattels being on the same lands shall be saved to the aforesaid lord Osbert Giffard my father. Further, I have bound myself by my faith and oath that I will not give nor sell nor alienate in any fashion acres nor half acres nor lands nor tenements nor curtilage; neither will I make any tenement free, nor

¹ *Sc.* the Jurors.² February 2.³ June 24.

Note from the Record—*continued.*

faciam liberum nec aliquod tenementum liberum nec vllum seruicium remoueam nec de vlllo proposito compotum recipiam nisi per visum domini Iohannis Giffard Et ad maiorem securitatem in manu predicti domini Osberti patris mei fidem meam dedi et sacramento super corpus domini me astrinxi in Ecclesia Saresburie quod si ita contingat quod deus defendat quod absit in solutione dicte pecunie terminis predictis in parte vel in toto me deficere vel aliquod faciam contra scriptum istud extunc subiicio me malediccioni patris mei domini Osberti Giffard et domine matris mee quam pater et mater filio dare possunt et in omnibus sentenciis quas Archiepiscopi [et] Episcopi dare possunt Et quod omnes homines clerici et laici me teneant in sententia. Iterum renuncio omni Iuri et remedio et auxilio Regie Curie per quod aliquo modo michi prodesse poteris¹ seu dicto domino Osberto patre meo possit impedire aut nocere. In cuius rei testimonio ego Osbertus filius domini Osberti Giffard vni parti huius scripti sigillum meum apposui. Et sigillum domini Osberti patris mei est appensum. Hiis testibus dominus Ricardus de Manstone Miles Iacobus de Trowe Miles Radulphus de Rocheford Miles dominus Oliuerus Dynon Miles dominus Nicholaus de monte forti Simon de Torny et dominus Iohannes filius Gwydonis Willelmus le Pore dominus Ricardus Dilyons Robertus de Rumeneye Walterus de Wynchehulle Robertus le Heyr balliuus de Wodestoke Simon filius Magistri Willelmus [sic] de Maydewelle et multis aliis.²

Dicunt eciam quod idem Osbertus pater etc. postea fecit predicto Osberto filio suo quamdam Cartam cuius carte transcriptum similiter liberauerunt Curie sub hiis verbis. Sciant presentes et futuri quod ego Osbertus Giffard Miles dominus de Dadyngtone dedi concessi et hac presenti carta mea confirmaui Osberto filio et heredi meo totum manerium de Dadyngtone cum omnimodis suis pertinenciis et omnia maneria et omnes terras cum pertinenciis que habui in Anglia exceptis terris meis in Comitatibus Deuone et Gloucestre Tenendum et habendum omnia predicta maneria et omnes predictas terras cum pertinenciis in boscis pratis pasturis stagnis molendinis redditibus et seruiciis tam liberorum hominum quam villanorum Warennis Chaciiis parciis viuariis libertatibus feriis mercatis Hundredis extrinsecis et intrinsecis piscariis aduocationibus ecclesiarum et omnibus aliis libertatibus et liberis consuetudinibus in mari et in terra predictis terris et maneriis pertinentibus sibi et heredibus suis legitime procreatis de me omni tempore vite mee adeo libere sicut ego eas tenui vel tenere clamaui Reddendo inde annuatim michi dum vixero illum redditum qui continetur in quodam scripto inter nos cirographato terminis ibidem statutis pro omnibus seruiciis querelis et demandis saluis michi dum vixero scutagiis Wardis Maritagiis releuiis et eschaetis cum accidunt. Et ego predictus Osbertus dicta maneria et predictas terras cum pertinenciis predicto Osberto filio meo et heredi et heredibus eius legitime genitis contra omnes homines et feminas teneri Warantizabo. Et si heredes de se legitimos non habuerit predictum Manerium de Dadyngtone et omnia predicta maneria et terre cum pertinenciis michi et heredibus

¹ *Rectius* poterit. ² The names of the witnesses are all in the nominative case.

Note from the Record—*continued.*

will I do away with any free tenement nor any servile one, nor from any reeve will I accept account save under the inspection of the lord John Giffard. And for greater security in the hand of the aforesaid Lord Osbert my father I have plighted my faith and I have bound myself by an oath upon the Body of Our Lord in the Church of Salisbury, that if it so happen, which God forbend, that there be any default in me in the payment of the said money at the appointed terms in part or whole or if I shall do aught contrary to the tenour of this writing, thenceforward may I lie under the heaviest curse which the lord Osbert Giffard my father and the lady my mother can lay upon a son, and I will submit me to all the sentences that Archbishops and Bishops may pass upon me, and I consent that all men, both clerks and laymen, shall hold me bound by them. And I further renounce every right, remedy, and aid in the King's Court which might in any way advantage me or be a hindrance or detriment to the said Lord Osbert my father. In witness whereof I Osbert, son of the Lord Osbert Giffard, have set my seal to one part of this writing. And the seal of the Lord Osbert my father is appended. These be witnesses—the Lord Richard of Manston, Knight; James of Trowe, Knight; Ralph of Rochford, Knight; the Lord Oliver Dynon, Knight; the Lord Nicholas of Montford; Simon of Tornay and the Lord John, son of Guy; William le Poer; the Lord Richard of Lyons; Robert of Romney; Walter of Wynchehulle; Robert the Heyr, bailiff of Woodstock; Simon the son of Master William of Maidwell, together with many others.

They say further that the same Osbert, father etc. did after make to the aforesaid Osbert his son a certain charter; and of this charter likewise they delivered a copy to the Court in these words¹: Let all present and to come know that I Osbert Giffard, Knight, lord of Dodyngton, have given, granted and have by this my present charter confirmed to Osbert my son and heir all the manor of Dodyngton together with all its appurtenances of every kind and all the manors with their appurtenances which I have in England, saving my lands in the counties of Devon and Gloucester, To have and to hold of me all the manors aforesaid and all the lands aforesaid together with their appurtenances in woods, meadows, pastures, ponds, mills, rents and services as well of free men as of villeins, warrens, chases, parks, stews, liberties, fairs, markets, Hundreds extrinsic and intrinsic, fish ponds, advowsons of churches and all other liberties and free customs on land and sea appurtenant to the aforesaid lands and manors, to him and to his heirs lawfully begotten, all the time of my life, as freely as I have held them or have claimed to hold them, paying therefor to me every year I shall live such rent as is named in a certain chirographed writing at the terms therein stated for all services, plaints and claims, saving to me while I shall live the scutages, wardships, marriages, reliefs and escheats when they accrue. And I the aforesaid Osbert bind myself to warrant the said manors and aforesaid lands with their appurtenances to the aforesaid Osbert my son and heir and to his heirs lawfully begotten against all men and women. And if he shall not have lawful heirs of his body then the aforesaid manor of Dodyngton and all the aforesaid manors and lands with their appurtenances are to

¹ This seems to be a quite different charter from the one mentioned in the reports.

Note from the Record—*continued.*

meis propinquieribus reuertant et remaneant imperpetuum sine aliquali condicione. In cuius rei testimonium huic carte sigillum meum apposui. Testibus domino Iohanne filio Gwydonis Willelmo le Pouere Ricardo de Lyuns Roberto de Romeneye Waltero de Wynchehulle Militibus Roberto le Heir balliuo de Wodestoke Simone filio Magistri Willelmo [*sic*] de Maydewelle Iohanne de Briddesthorne et aliis.

Et Iurati quesiti per Iusticiarios si predicta Sarra tempore recepcionis et tradicionis predictorum desponsata fuit predicto Osberto filio Osberti etc. Et si predicta Carta que postmodum facta fuit predicto Osberto filio Osberti confecta fuit durantibus sponsaliis etc. Dicunt quod sic Quesiti eciam si predictus Osbertus Giffard pater etc. liberauit predicto Osberto filio Osberti aliquam nouam seisinam virtute predictae carte aliam quam prius habuit racione Tradicionis sue predictae vt predictum est dicunt quod non. Quesiti insuper si idem Osbertus filius Osberti talem habuit statum in predictis tenementis quod ipsam dotare potuit Dicunt quod ipsi ignorant hoc dicere sed inde petunt discrecionem Iusticiariorum etc. Ideo ad Iudicium etc.

Postea ante iudicium redditum venit quidam Willelmus filius Willelmi Portebref Et dicit quod predicta tenementa sunt Ius suum de perquisito suo et quod predictus Willelmus Portebref pater suus nichil habet in eisdem nisi liberum tenementum tantum simul cum ipso Willelmo filio Willelmi Dicit reuera quod quidam Osbertus Giffard Miles quondam fuit seisitus de predictis tenementis qui de seisina sua tenementa illa dedit concessit et carta sua confirmauit cuidam Iohanni de Croxford et predicto Willelmo Portebref patri etc. et Eolente uxori eius et isti Willelmo filio Willelmi et heredibus eiusdem Willelmi filii Willelmi et assignatis suis etc. Tenenda predictis Iohanni Willelmo Eolente et Willelmo et eius heredibus vel assignatis etc. libere quiete Iure hereditario et imperpetuum et obligauit se et heredes suos ad Warantizandum etc. imperpetuum Et profert hic predictam cartam sub nomine ipsius Osberti que hoc testatur etc. Et petit quod ipse ad defensionem Iuris sui in hac parte admittatur etc.

Et Henricus et Sarra dicunt quod predictus Willelmus filius Willelmi ad prorogandam seisinam suam de predictis tenementis non debet etc. Dicunt enim quod idem Willelmus filius Willelmi non est in casu statuti etc. cum quis per defaltam etc. amittere voluerit etc. vel fecte defenderit etc. vnde precunt iudicium suum instanter sibi reddi super predicto veredicto etc. Dies datus est eis de audiendo iudicio suo hic a die Pasche in tres septimanas saluis vtrisque partibus racionibus suis dicendis etc. Ad quem diem veniunt partes et datus est eis dies de audiendo iudicio suo hic in Crastino sancti Iohannis Baptiste etc. in eodem statu quo nunc etc. Ad quem diem veniunt partes et datus est eis dies de audiendo Iudicio suo hic a die sancti Michaelis in tres septimanas in eodem statu quo nunc etc. Ad quem diem veniunt partes per attornatos suos et super hoc dies datus est eis de audiendo iudicio suo hic in Crastino Purificacionis beate Marie in eodem statu quo nunc eo quod iudicium nondum etc.¹

¹ Nothing further has been recorded.

Note from the Record—*continued.*

revert to me and my nearest heirs in perpetual remainder without any condition. In witness whereof I have set my seal to this charter ; the lord John, son of Guy, William le Poer, Richard of Lyons, Robert of Romney, Walter of Wynchehulle, Knights, Robert the Heir, bailiff of Woodstock, Simon son of Master William of Maidwell, John of Briddesthorpe and others being witnesses.

And the Jurors, asked by the Justices whether the aforesaid Sarah was married to the aforesaid Osbert the son of Osbert etc. at the time of the receipt and delivery of the aforesaid [tenements etc.], and whether the charter that was afterwards made to the aforesaid Osbert the son of Osbert was made during the marriage etc., say that it was so. Asked further whether the aforesaid Osbert Giffard father etc. delivered to the aforesaid Osbert son of Osbert any fresh seisin under such charter other than previously in virtue of his aforesaid delivery, as is aforesaid, they say that he did not. Asked further whether the same Osbert son of Osbert had such an estate in the tenements aforesaid that he might endow her, they say that they are not able to tell this, but they pray the advice thereon of the Justices etc. So to judgment thereon.

Afterwards, before judgment given, cometh a certain William, son of William Portebref. And he saith that the aforesaid tenements are his right, of his purchase, and that the aforesaid William Portebref his father hath naught in the same save a freehold only together with himself William the son of William. For in sooth, he saith, a certain Osbert Giffard, knight, was aforetime seised of the aforesaid tenements who of his seisin gave, granted, and by his charter confirmed those tenements to a certain John of Croxford and to the aforesaid William Portebref, father etc. and to Iolanthe his wife and to this same William, the son of William, and to the heirs of the same William, son of William, and their assigns to hold to the aforesaid John, William, Iolanthe and William and their heirs or assigns etc. freely, quietly, by hereditary right and in perpetuity and bound himself and his heirs to warranty etc. in perpetuity. And he doth proffer here the aforesaid charter under the name of the said Osbert which witnesseth this etc. And he seeketh that he may be received to defend his right in this matter etc.

And Harry and Sarah do say that the aforesaid William son of William ought not to be received to delay their seisin of the aforesaid tenements etc. For they say that the same William the son of William doth not come within the statute¹ etc. which provideth for the case of a defendant who hath deliberately lost by default etc. or who hath made a sham defence etc. ; wherefore they pray that their judgment on the aforesaid verdict may be straightway delivered to them etc. A day is given them to hear their judgment here three weeks from Easter,² the right to further argument being saved to both parties etc. on which day the parties came, and a day was given them for hearing their judgment here on the morrow³ of St. John Baptist etc. in the same state in which now etc. On which day the parties come by their attornies and a day is given them to hear their judgment here three weeks after St. Michael's Day in the same state in which now etc. On which day the parties come by their attornies, and thereupon a day is given them to hear their judgment here on the morrow⁴ of the Purification of Blessed Mary in the same state in which now etc. which judgment is not yet etc.

¹ Statute of Westminster II. cap. iv.

² In 1312 Easter fell on March 26.

³ June 25.

⁴ February 3.

7. CHAMPYOUN *v.* HAUERING, LEEK AND STRETTONE.¹I.²

Quare impedit.

Vn Iohan et Alice sa femme porterent vn quare impedit vers Iohan de Lox Esli³ de deueluyne ⁴et Geffrei de Stantone⁵ chapelyn quod permittant ipsos presentare idoneam personam ad vicariam Capelle etc. et disoient qun Richard le primer baroun Alicie fuit seisi du maner de Stauntone a qi laucweson etc. est apendaunt et presenta ⁶vn A. son clerk de E.⁷ qa soun presentement etc. apres la mort etc. descendi le manoir ensemblement oue lauoweson a Nicholas com a fitz et heir le quel Nicholas⁸ assigna la terce partie du maner ⁹etc. et ore la eglise est voide et ceo est la tierce voidaunce¹⁰ etc. issint apent a Iohan et Alice a presenter a ore par raison del dower Alice.

Scrop. La ou vous nomes en vostre bref Iohan Lok eslit il nentra pas par eleccioun eyns par colacioun lapoistoille par qi il deit estre nomee Erceuesqe iugement etc. du bref.

Frisk. Il ne deit estre iames nomee Erceuesqe taunt qil soit sacre mes il nest pas sacre par qi il deit estre nome Elist.

Scrop. Vncore iugement du bref qe le iour de bref purchace ¹¹il fut sacre par qi vous ly duyssez auer nomee Erceuesqe iugement.

Frisk. Com list¹² iour du bref purchace prest etc.¹³

Et fuit chace a respoudre a ceo etc.

Scrop. Iohan de Lok est deen de Penkereche nent nome Dene¹⁴ iugement du bref.

Frisk. Nous auoms afferme en vostre persones vn trespas a quel trespas il vous couent respoudre et si ¹⁵nous eussoms¹⁶ nome Iohan Lok tantum¹⁷ serreit nostre¹⁸ bref¹⁹ assetz bon iugement.

Heruy. Sil demaunda terre ou tenementz ver ly dount le Deen est seisi il ly couendreit nomer vous²⁰ deen par qi respounetz outre.

Scrop. Geffrei²¹ le Chapeleyn vous dit qil est persone²² de mesme laglise ²³et est²⁴ institut etc. et autre estat ne cleyme en la uowesoun etc.

¹ Reported by *B, C, D, M, P* (twice by each of the five latter texts), *X, Z*. *T* contains a mutilated report closely following (I). ² Text of (I) from *D*, collated with *B, C, M* and *P*. ³ List, *M*. ⁴⁻⁵ from *B* and *C*; *D, M, P* have a defere destatut. ⁶⁻⁷ vn son clerk T. par noun, *B, C*. ⁸ fiz, *B, C*. ⁹⁻¹⁰ a Alice en noun del franche tenement Richard etc. le quel Nicholas presenta ij. foiz, *B* and *C*, with slight variances. ¹¹⁻¹³ prest etc., *M, P*. ¹² eslit, *B* and *C*. ¹⁴ Supplied from *B* and *C*. ¹⁵⁻¹⁶ From *B* and *C*. *D* has vous nous vssetz. *M* and *P* have nous vous eussoms. ¹⁷ From *C*. *D, M, P* have taunt. ¹⁷⁻¹⁹ nostre bref eust este, *B* and *C*. ¹⁸ vostre, *M, P*. ²⁰ Added from *B* and *C*. ²¹ From *B* and *C*. *D* has Sire; *M* has a sauer, and *P* has scilicet a sauer. ²² pierce, *P*. ²³⁻²⁴ estre Dean, *M*. ²⁴ *P* adds de.

7. CHAMPION *v.* HAVERING, LEEK AND STRETTON.

I.

Quare impedit.

One John and Alice his wife brought a *quare impedit* against John of Leek,¹ Elect of Dublin, and Geoffrey of Stretton, chaplain, [claiming] that they should permit them to present a fit person to the vicarage of the chapel etc.; and they said that one Richard, the former husband of Alice, was seised of the manor of Stanton, to which the advowson etc. is appendant, and presented one A. of E. his clerk, who, upon his presentation etc. After the death [of Richard] etc., the manor together with the advowson descended to Nicholas as son and heir; and this Nicholas assigned the third part of the manor etc., and the church is now vacant, and this is the third vacancy etc. So it now belongeth to John and Alice to present in right of Alice's dower.

Scrope. Whereas you name in your writ John Leek, Elect, [we say that he did not enter by election but by collation by the Pope. Consequently he ought to be called Archbishop. Judgment etc. of the writ.

Friskeney. He ought not to be called Archbishop until he hath been consecrated, and he hath not yet been consecrated; wherefore he is properly styled Elect.

Scrope. Again judgment of the writ, for he was [already] consecrated on the day when the writ was purchased. Consequently he should have been called Archbishop. Judgment.

Friskeney. That he was Elect on the day the writ was purchased, ready etc. And the other side had to meet this etc.

Scrope. John of Leek is Dean of Penkridge,² and he is not named Dean. Judgment of the writ.

Friskeney. We have affirmed in your person a trespass. To that respass you must answer. If we had named him as John Leek only our writ would be good enough. Judgment.

STANTON J. If land or tenements of which the Dean is seised were being claimed from him you would have to describe him as Dean. Wherefore answer over.

Scrope. Geoffrey the chaplain telleth you that he is parson of the same Church, and is instituted etc., and he doth not claim other estate

¹ John of Leek, then Bishop elect of Dunkeld in Scotland, was appointed Archbishop of Dublin by the Pope and confirmed by the King in 1311. His chief claim to distinction is that he obtained the Pope's consent to the

foundation of an University in Dublin; but he died, in 1313, before he could carry out his good intentions. He is buried in Westminster Abbey.

² Penkridge is six miles south of Stafford.

et Iohan vous dit qe la Chapel de Stauntone est annexey al Deen de Pokeriche et il ad le denee de colacioun le Roi et toutz les Erceuesques de Deuelyn Engleis et denglische Lange¹ deiuent auoir cel denee com appendaunt a lour Eglise de Deuelyn et² de la colacioun le Roi mes si autre qe Engleis seit Erceuesque le Roi dorra cel denee com sa³ franche Chapele et Iohan est elit de Deuelyn et tynt la denee com appendaunt a sa eglise de Deuelyn pur ceo qil est Engleis⁴ a qel deene la Chapele est apendaunt et il troua la denee seisi de cel Chapele et la Chapele pleine del presentement Richard de Hauerynge son predecessour iadys deen et issint tynt il la denee de la colacioun le Roi et troua la Denee seisi de cel Chapele et prioms du Roi eyde.

Frisk. Nous auoms dit qe la Chapel est appendaunt au maner de Staunton de queu manoir nostre baroun fut seisi⁵ et presenta com appendaunt et puy apres sa mort nous sumes douwe de la terce partie de ceu manoir etc. et leir nostre baroun qest seisi⁶ de les⁷ .ij. parties presenta .ij. foitz etc. et cest la terce voydaunce et vous nous destourbet de vostre tort demesne iugement si eyde deuetz auer.

Scrop. Nous auoms dit qe la Chapel est pleyn del presentement nostre predecessour etc. **et** est annexe⁸ etc. al deene qe nous auoms de la collacioun le Roi et issint trouames nostre denee seisi par qi vous ne poietz destourbance assigner en nous⁹ iugement ¹⁰si nous ne deuoms eyde auer.¹¹

Rowberry. Qant il iad autre¹² qe Engleis Erceuesque de Deuelyng le Roi deit doner la Denee de Penkrik et le viconte fra institution etc.

Et sount aiornetz a la .xv. de la Trinite a queu iour—

Toud. dit vt supra coment la Chapele est annexe al Denee de P. et de la collacioun le Roi et coment touz les Erceuesques de Deuelyn Engleis deiuent auer cel Deene com appendaunt a leglise de Deuelyn etc. vt supra et nentendoms mye qe saunz le Roi deuoms respoudre et prioms eyde de ly.

¹ *M, P add ne.* ² *B, C, P, M omit.* ³ *a, M.* ⁴ *From B, C.*
D, M, and P have elist. ⁵⁻⁶ *M omits.* ⁶⁻⁷ *du lees, P.* ⁸ *a nous, P.*
⁹ *vous, P.* ¹⁰⁻¹¹ *si eide deuoms auoir, P.* ¹² *auere, P.*

in the advowson etc., and John telleth you that the chapel of Stanton is annexed to the Deanery of Penkridge, and he hath the deanery from collation by the King; and that all Archbishops of Dublin that are Englishmen and speak the English tongue ought to have this deanery as appendant to their Church of Dublin and by collation of the King¹; but if one that be not an Englishman be Archbishop, then the King shall give this deanery as his free chapel; and John is Elect of Dublin and holdeth the deanery as appendant to his church of Dublin, because he is an Englishman. To this deanery the chapel is appendant; and he found the deanery seised of this chapel and the chapel filled on the presentation of Richard of Havering² his predecessor, aforetime Dean; and so he holdeth the deanery by the collation of the King, and he found the deanery seised of this chapel; and we pray aid of the King.

Friskenev. We have said that the chapel is appendant to the manor of Stanton, of which manor our ancestor was seised, and he presented to the chapel as being so appendant; and since his death we are dowered with the third part of this manor etc.; and the heir of our husband that is seised of the two parts hath twice presented etc., and this is the third voidance; and you are disturbing us of your own wrongful act. Judgment if you ought to have aid.

Scrope. We have said that the chapel is filled by the presentation of our predecessor etc., and that it is annexed etc. to the deanery which we have by collation of the King; and, since we found our deanery seised, you cannot assign disturbance in us. Judgment whether we ought not to have aid.

ROUBERY J. When there is other than an English Archbishop of Dublin the King should give the deanery of Penkridge, and the Sheriff will see to the institution etc.

And the parties were adjourned to the quindene of the Trinity, upon which day—

Toudeby said as above how the chapel is annexed to the deanery of Penkridge and by collation of the King, and how all English Archbishops of Dublin ought to have this deanery as appendant to the Church of Dublin etc., as above; and we submit that we ought not to answer without the King, and we pray aid of him.

¹ See the *Introduction*, p. xiv.

² Richard of Havering, Precentor of St. Patrick's, Dublin, is said to have been elected twenty-second Archbishop of Dublin by the Chapter and to have been confirmed both by the King and the Pope. He was not consecrated—from what cause does not appear. After

enjoying the dignity and profits of the Archbishopric for four years, he resigned his office. He was installed Prebendary of Lincoln in August, 1309, at which time he is styled 'Dublinensis Electus.' In 1321 he was appointed Archdeacon of Chester.

Frisk. vt prius dit¹ coment son baroun fust seisi du maner etc. et coment il presenta son clerk qasoun presentement etc. et coment la terce partie du maner fut assigne ala femme en noun de douere et coment leir etc. fuit seisi de les .ij. parties et auoit presente .ij. foitz et qe ceo est la terce voidaunce et issint appent etc.

Scrop. Sire vous veietz bien coment nous pernomms nostre tittle du don le Roi et de sa collacioun et fesoms la Chapel annexe a la Denee de P. et coment nous trouames la Denee seisi etc. par qi nentendoms mye qe saunz le Roi poms respoundre et prioms eyde de ly.

Berr. Vous dites qe vous auetz la Denee du don le Roi quoi auetz de ceo la.

Toud. Nous entendoms qe nous auoms assetz mostre qe nous auoms dit qe cel Denee est de la collacioun le Roi issint qe touz les erceuesqes Engleis vt supra et sil ad autre Erceuesqe qe Engleis qe le Roi dorra cel denee com sa franche Chapele et issi assetz auoms lie le droit au Roi en ceo cas par qi nous semble qe assetz auoms mostre.

Berr. De puis qe² vous auetz dit qe vous clametz du doun le Roi vous mostretz fet qe testmoigne ou dirret outre.

Scrop. La ou Iohan et Alice dient qe Richard baroun mesme cesti Alice presenta T. de C. son³ clerk qe a son presentement fut ressu et institut etc. nous vous dioms qe nostre predecessour presenta mesme cesti T. de C. prest dauerer.

Frisk. Qe Richard li presenta prest etc.

⁴Et alii contra etc.⁵

II.⁶

Quare impedit.

Vn I. et A. sa femme porterunt quod permittat presentare ad capellam de T. vers I. de Lok elit de Dyuelin et Adam de T. chapellan et counterent qe R. primer baroun A. fu seisi du maner de Stanton a qi etc. et presenta etc. et qe S. fiz et heir R. assigna a A. la terce partie en dower et ceo est la terce voidance et mostra coment issint apent.

Scrop. I. de Lok entra par collacion lapostoill et nent par eleccion et vous le nomez elit iugement du bref.

Fr. Il nest pas vncor sacre par qi il deit estre nome elit et nent Euesqe.

¹ P omits.

² From *M* and *P*; par *qi*, *D*; pus *qe*, *B*, *C*.

³ *lour*, *C*.

⁴⁻⁵ Supplied from *B*, *C*, *M*, and *P*.

⁶ Text of (II) from *X*.

Friskenev saith as before how Alice's husband was seised of the manor etc., and how he presented his clerk, who, upon his presentation etc., and how the third part of the manor was assigned to the wife in name of dower, and how the heir etc. was seised of two parts and had twice presented, and that this is the third voidance, and consequently it belongeth etc.

Scrope. Sir, you see plainly how we take our title by the gift of the King and of his collation, and we lay the chapel as annexed to the deanery of Penkridge; and how we found the deanery seised etc.; wherefore we submit that we cannot answer without the King, and we pray aid of him.

BEREFORD C.J. You say that you have the deanery by the King's gift. What have you to show that?

Toudeby. We submit that we have sufficiently proved what we here said, that this deanery is of the King's collation, so that all English Archbishops etc. *as above*; and if there be other than an English Archbishop then the King will present to this deanery as to his free chapel; and so we have sufficiently laid the right in the King in these circumstances. Consequently we submit that we have shown sufficient.

BEREFORD C.J. Since you have said that you are claiming by the gift of the King, you must show a deed that witnesseth this, or you must plead over.

Scrope. Whereas John and Alice say that Richard, husband of this same Alice, presented T. of C., his clerk, who, upon his presentation was received and instituted, we tell you that our predecessor presented this same T. of C. Ready to aver.

Friskenev. That Richard presented him, ready etc.
And the other side joined issue.

II.

Quare impedit.

One J. and A. his wife brought their *quod permittat* to present to the chapel of T. against J. of Leek, Elect of Dublin, and Adam of T., chaplain; and counted that R., formerly husband of A., was seised of the manor of Stanton, to which etc., and presented etc., and that S., son and heir of R., assigned to A. the third part in dower; and this is the third voidance, and showed how it was their right etc.

Scrope. J. of Leek entered by collation of the Pope and not by election; and you call him Elect. Judgment of the writ.

Friskenev. He is not yet consecrated; wherefore he ought to be called Elect, and not Bishop.

Scrop. Il fut sacre auant le bref porte nent nome Erceuesqe iugement du bref.

Fr. Elit ior du bref prest etc.

Scrop. weiuia et dist I. Lok est Deen de Pokriche nent nome deen iugement du bref.

Fr. Sil fut nome I. Lok sanz plus ceo bref de trespas serreit assez bon.

Scrop. Adam vous dit qil est persone de mesme leglise et altre estat ne cleime Ion vous dit qe la auoueson de la chapelle est apendant a la deene de Pokrich la qel deene il ad de la collacion le Roi et toz ses predecessors Erceuesques engleis vnt eu cel denee par collacion de Rois et si altre qe engleis seit Erceuesqe donques le Roi durra la denee com sa fraunche chapelle ou beau liest issint tent il la denee com apendant a sa eglise de dyuel et par collacion le Roi com engleis et prie eide du Roi.

Fr. Ceo est vn bref de trespas par qei etc. estre ceo il ne respoude pas a ceo qe lauoueson est appendant al maner de S. ne il ne respoude pas a les presentements iugement.

Scrop. Nous trouames la denee seisi de cest auouesoun et la eglise plein de Adam de T. par presentement R. nostre predecessor par qi vous ne poez assigner tort en nous et prioms eide du Roi.

Berr. Qei auez de la collacion le Roi.

Scrop. Toz nos predecessors engleis Erceuesques de Dyuelin vnt eu la denee des collacions des Rois.

Berr. Eid nauerez pas sanz mostrer fet du Roi.

Scrop. La ou il dient qe R. iadis baroun A. presenta T. etc. R. nostre predecessor li presenta et a son presentement fut ressu etc.

Fr. Richard nostre baroun li presenta et a son presentement ressu prest etc.

Alii e contra.

III.¹

Quare impedit.

Vn B. et A. porterunt lour Quare Impedit vers I. de Leek Eslit de Deuelyn et R. de S. del auoeson del eglise del S. ou fust dit qe I. de Leek auoit la Denee de la collacion le pape² par qei il dust estre nomée Erceuesqe et a ceo fust dit qil ne pooit mye estre Erceuesqe deuant qil

¹ Text of (III) from Z. ² A line has been drawn through 'pape' by a later hand and 'roi' written above it. 'Collacion le Roi' was written by the original scribe in the other passages of the report where the phrase occurs. But, as a matter of fact, it was by the collation of the Pope, and not of the King, that the Archbishop held the Deanery. See the *Introduction* p. xv above.

Scrope. He was consecrated before the writ was brought. Not named Bishop. Judgment of the writ.

Friskenev. Elect on the day of the writ. Ready etc.

Scrope waived the exception, and said: J. Leek is Dean of Penkridge, and is not named Dean. Judgment of the writ.

Friskenev. If he were simply named as J. Leek, with naught more, this writ of trespass would be good enough.

Scrope. Adam telleth you that he is parson of the same church, and he claimeth no other estate. John telleth you that the advowson of the chapel is appendant to the deanery of Penkridge, the which deanery he hath of the King's collation; and all English Archbishops, his predecessors, have had this deanery by the collation of kings; and, if other than an Englishman be Archbishop, the King will give the deanery to whomsoever he please as his free chapel. So John holdeth the deanery as appendant to his Church of Dublin, and by collation of the King, as an Englishman; and he prayeth aid of the King.

Friskenev. This is a writ of trespass, wherefore etc. Further, he doth not answer to the plea that the advowson is appendant to the Manor of S., nor doth he answer to the presentations. Judgment.

Scrope. We found the deanery seised of this advowson, and the church filled by Adam of T. on the presentation of R. our predecessor. Wherefore you cannot assign any wrong in us, and we pray aid of the King.

BEREFORD C.J. What have you got in proof of the King's collation?

Scrope. All our predecessors, being English Archbishops of Dublin, have had the deanery by the collations of kings.

BEREFORD C.J. You will not get aid unless you show a deed by the King.

Scrope. Whereas they say that R. that was aforetime husband of A. did present T. etc., [we say that] R. our predecessor presented him, and that upon his presentation he was received etc.

Friskenev. Richard our husband presented him, and upon his presentation he was received. Ready etc.

And the others joined issue.

III.

Quare impedit.

One B. and A. brought their *quare impedit* against J. of Leek, Elect of Dublin, and R. of S. of the advowson of the church of S., where it was said that J. of Leek had the deanery by the collation of the Pope, and that therefore he should have been described as Archbishop. To which it was said that he could not be Archbishop before he was

fust sacree et puisse fust dit qe I. fut Deen de Pykeryng par qei il dust estre nomez Deen et puis fut dit qil auoient afferme vn tort en sa persone al quel il lui couent respoundre mes si terre ou tenement fust en demande dont la [*sic*] Deen fust seisi autre serroit Et puis leslyt dit qe la Chapele de S. est annexe a la Deene de Pykeryng et qil ad cele Deene de la Collacion le Roi et toutz les Erceuesques Engleis et de Engleche lunge com appendaunt a lor Euesche de D. mes si autre soit Euesqe qe Engleis le Roi la dorra com sa fraunche Chapele et vous dist qil troua cel Denee seisi de cele Chapele et la Chapele pleyne del presente ment R. de Hauering son predecessor iadis Deen et issint tient il cele Denee de la collacion le Roi et prie Eide etc. Et pur ceo qil ne moustramy fait qe testmoigne qil tient cele Denee de la collacion le Roi il fust chace a respoundre etc.

IV.¹

Quare impedit ou il dit qil est persone et autre rien cleyme.

Vn homme porte vn quare impedit vers vn Geffrei de C. et dit qil li disturba a presenter ²couenable persone³ a la Eglise de R. qe ⁴a soun auowesoun appent⁵ etc.

Toud. A teu bref ne deit il estre resceu qar nous vous dioms qe nous sumes persone et enpersonee de mesme la eglise et ren ne clamons en lauowesoun iugement si teu bref vers nous igise.

Will. Quoi respounetz vous a la disturbance qar nostre bref veot .ij. choses yne qanous apent a presenter et vn autre qe vous nous disturbastes ⁶ par qi il couent qe vous respougnez a la disturbance.

Toud. Nous ne clamons rien en lauowesoun par qi disturbance en nostre persone ne poez assigner.

⁷ *Will.* Il vous couient qe vous respoignez a la disturbance qar par vn teu dit ne poietz estortre damages.

¹ Text of (IV) from *D* collated with *C*, *M* and *P*. ²⁻³ *M* omits. ⁴⁻⁵ from *M*.

⁶ auez disturbe, *M*.

⁷⁻¹³ on p. 32 Between these points the text of *C* is:—

Will. Ieo vous assigneray destorbance en vostre persone car vous auez tant procure al Euesqe qe nostre presente ne fut pas resceu et ensement vous auez sufiert attachement et destresce et venistes en ceste court et issint nous auez destorbe.

Toud. Vous ne poez par tant etc. disturbance assigner qe nous ne clamons rien en la vowesoun. Et vous poez auer bref al Euesqe issy qe vostre presente put estre resceu. Et si le Euesqe ne veot pas receyure vostre presente vous auez vostre recouerer par vostre quare non admisit issi qe par checune voy ne poez en nous destorbance assigner.

Scrop. Il dit qil est persone empersone de qi auowere etc. de qi presentement car en teu cas nous poms respoundre et dire nent presente par my ly dount il couent etc.

consecrated; and then it was said that J. was Dean of Penkridge, and therefore ought to have been called Dean. And then it was said that the plaintiffs had affirmed a tort in the person of J. to which he ought to reply, though it would have been otherwise in a case of a claim to land or tenements of which the Dean was seised. And then the Elect saith that the chapel of S. is annexed to the deanery of Penkridge, and that he hath this deanery by the collation of the King, and that all Archbishops that be English and speak the English tongue have so had it, as appendant to their Bishopric of D.; but, if other than an Englishman be Bishop, then the King will give it as his free chapel; and he telleth you that he found this deanery seised of the chapel, and the chapel filled on the presentation of R. of Havering, his predecessor, that was aforetime Dean; and so he holdeth this deanery by collation of the King; and he prayeth aid etc. And because he did not show any deed which witnessed that he holdeth this deanery by the collation of the King he was made to answer etc..

IV.¹

Quare impedit, where the respondent sayeth that he is parson and claimeth naught else.

A man bringeth a *quare impedit* against one Geoffrey of C. and saith that he doth disturb him in presenting a fit parson to the church of R. that doth belong to his advowson etc.

Toudeby. To such a writ he ought not to be received, for we tell you that we are parson and imparsoner of the same church, and we claim naught in the advowson. Judgment whether such a writ lie against us.

Willoughby. What do you answer to the disturbance? For our writ alleges two things: one of which is that it belongeth to us to present, and the other is that you have disturbed us. Consequently you must answer to the disturbance.

Toudeby. We claim naught in the advowson, and therefore you cannot assign disturbance in our person.

Willoughby. You must answer to the disturbance, for you cannot avoid damages by what you have said.

¹ This report deals with the case against the actual vicar of Stretton, who claimed nothing in the advowson. The previous reports deal with the case against the Archbishop, who claimed to be patron.

Berr. ¹ Surmettez li² coment il vous ad destorbe qar il ³dit qe il⁴ ne cleyme rien en la auowesoun ⁵ et pur ceo mustrez coment il vous ad destorbe.⁶

Will. Nous vous dioms qil ad taunt procure al Euesqe qe nostre presente ne fut pas reseu et auxi ad il suffert attachement et destresce et vient en ceste court par la graunt destresce et issint ad il nous destorbe etc.

Berr. Il ne vous ad fet nul tort qar sil seit persone de la eglise depuys qil ne cleyme rien en lauowesoun vers ly ne poetz vostre presentement recouerer et pur ceo dites ⁷autre chose.⁸

Scrope. Il dit qil est persone et personee de qi auowesoun et de qi presentement.

Toudeby. A ceo nauoms meistre a respoudre qar nous ne poms mie pleder alauowesoun pur ceo qe nous clamoms rien mes ⁹ com persone.

Scrope. Si vous seiet persone vous sauetz bien de qi ¹⁰presentement¹¹ et par qi presente en qeu cas nous ne¹² poms respoudre qe nient presente par li par qi il couent qe vous dietz de qi auowesoun vous cleymez la personage.¹³

Berreford.—Ieo pose qil die qil ad cel presentement de Gille Attergot quod non est in rerum natura purrez porter bref ¹⁴vers ly ou rien recouerer par taunt quod diceret non.¹⁵

Scrop. Peot estre qil est abatu en la eglise ou qil ad la eglise de la collacioun de lapoistoille et¹⁶ nous poms en tieu cas auer¹⁷ auauntage par qi il couent qil die par qi presente.

Berr. Voletz vous qe nous enquerroms le quel il sabatist en cel esglise ou noun.

¹⁸*Scrop.* Nanyl etc.¹⁹

Toudeby. De puy qe nous ne cleymons rien en lauowesoun vous ne poetz ²⁰destorbaunce en nostre dreyt²¹ assigner et vous poietz auer bref al Euesqe issi qe vostre ²²presente poet²³ estre ressu ²⁴en qeu cas sil seit institut et adonqe destorbe et il seit mie par nous il couent qe ceo plee ala Conisaunce de la court chrestiene et si leuesqe ne veot poynt receyure vostre presentement auetz vostre recouerer²⁵ par le

¹⁻² moustrez, *M.* ³⁻⁴ from *M.* ⁵⁻⁶ *M* omits. ⁷⁻⁸ outre, *P.*
⁹ si noun, *M.* ¹⁰⁻¹⁵ doun par qi presentement en quel cas nous pomes respoudre a dire qe nient presente par ly donqs il couient etc. *Berr.* ieo pose qe il deit qe il auet la eglise del presentement s. accio par qi non est in rerum natura pur ceo purrez vous porter vostre bref ou rien recouerir par cas vers ly quod diceret non, *M.*
¹¹ doun, *P.* ¹² *P* omits. ¹³ See note ⁷ p. 31. ¹⁴⁻¹⁵ ou rien recouerir par cas vers ly quod diceret non, *P.* ¹⁶ ou, *M.* *P.* ¹⁷ *M* adds nostre. ¹⁸⁻¹⁹ *M* omits *Scrop.* and makes nanyl part of BEREFORD'S speech. ²⁰ to ³ on p. 33, en vous [*sic*] destorbance assigner iugement, *P.* ²¹ persone, *M.* ²²⁻²³ presentement seit, *M.* ²⁴⁻²⁵ et issi le Euesqe ne veut pas recouerir vostre presentement vous auerez vostre recouerir, *M.*

BEREFORD C.J. Tell him how he hath disturbed you, for he saith that he claimeth naught in the advowson ; and so show him how he hath disturbed you.

Willoughby. We tell you that he hath brought such influence to bear on the Bishop that our presentee was not received ; and it is for that reason that he hath suffered attachment and distress and now cometh into this Court by the grand distress ; and so he hath disturbed us etc.

BEREFORD C.J. He hath done you no wrong, for, though he be parson of the church, yet, if he claimeth naught in the advowson, you cannot recover your presentation against him ; and therefore say something else.

Scrope. He saith that he is parson and imparsonnee. By whose advowson and whose presentation ?

Toudeby. We have no need to answer that, for we cannot plead to the advowson, since we claim naught but as parson.

Scrope. If you be parson you know very well by whose presentation you are such and by whom you were presented. Unless you answer, we cannot say in answer that you were not presented by such an one. Consequently you must tell us of whose advowson you claim the parsonage.

BEREFORD C.J. I put the case that he saith that he was presented by Giles Attergot, a person who doth not exist, could you, upon that bring a writ against him or recover aught ? I trow not.

Scrope. It may be that he abated himself in the church, or that he hath had the church by the collation of the Pope, and we cannot, [unless he answer,] draw our advantage therefrom. Consequently he ought to say by whom he was presented.

BEREFORD C.J. Do you want us to have an inquest as to whether or not he abated himself into this church ?

Scrope. No, etc.

Toudeby. Since we do not claim aught in the advowson you cannot allege against us that we are disturbing you in your right ; and you can have a writ to the Bishop so that your presentee may be received. In which case, if he be instituted and then be disturbed, and by us, then this plea would come under the jurisdiction of Court Christian. If, [on the other hand,] the Bishop will not receive your presentee, then

quare non admisit issi par nul enchesoun¹ vous ne poietz destorbance en nostre persone ²assigner qe put estre trie en cest court.³

Berreford. Pur ceo qil ne cleyme ren en lauowesoun mes dit qil est persone et impersonee et autre chose ne cleyme et vous ne poietz autre destorbance assigner en ly mes qil ad pris ces delayes qe ly sunt donez par lei la quel chose ⁴nest pas⁵ destorbance qant ⁶rien en lauoweson ne cleyme⁷ si agarde la court qe vous eietz bref al Euesqe etc. et ⁸il a dieu saunz recouerer damages etc.⁹

Notes from the Record.

I.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 90d., Staffordshire.

Robertus le Champyoun et Agnes vxor eius in octabis Sancti Martini proximo preteritis per attornatos suos optulit se in Curia hic versus magistrum Ricardum de Hauering Iohannem de Leek Electum Dublinensem et Thomam de Strettone Capellum de placito quod permittant ipsos presentare idoneam personam ad vicariam Capelle de Strattone que vacat et ad suam spectat donacionem etc. Et ipsi tunc non veniunt Et prius preceptum fuit vicecomiti quod distringeret predictum magistrum Ricardum per omnes terras etc. et eciam quod attachiaret predictos Iohannem et Thomam quod essent hic ad predictas Octabas Sancti Martini etc. Et vicecomes nichil inde fecit set mandat quod predicti Magister Ricardus Iohannes et Thomas nichil habent etc. per quod attachiari potuerint seu distringi etc. Ita quod tunc testatum fuit in Curia hic quod predicti Magister Ricardus Iohannes et Thomas satis habuerunt apud Penkeriche in eodem Comitatu etc. per quam quidem testificacionem licet per Curiam adtunc surreptiue fuit admissa et preceptum fuit vicecomiti sicut prius etc. quod distringeret predictum Magistrum Ricardum per omnes terras etc. Et similiter sicut prius quod attachiaret predictos Iohannem et Thomam quod essent hic ad hunc diem scilicet a die Sancti Hillarii in xv. dies etc. Et modo veniunt predicti Robertus et Agnes per attornatum predictae Agnetis Et vicecomes non misit breuia etc. Et Robertus et Agnes dicunt quod indebite et minus rite processum est in hoc placito versus predictos Magistrum Ricardum et alios etc. Quia dicunt quod ipsi Robertus et Agnes ad prefatas Octabas Sancti Martini quando breue de districcione retornatum fuit hic in Curia super ipsum Magistrum Ricardum etc. deberent habuisse breue Episcopo per defaltam ipsius Magistri Ricardi etc. quod Episcopus non obstante reclamacione ipsius Magistri Ricardi ad presentacionem ipsorum Roberti et Agnetis ad predictam vicariam idoneam personam admitteret etc. et similiter postquam breue de attachiamento etc. retornatum fuit super ipsos Electum et Thomam licet non

¹ auowere, *M.* ²⁻³ iugement, *M.* ³ from ²⁰ on p. 32, en vous [*sic*] destorbance assigner iugement, *P.*

⁴⁻⁵ ne pout estre, *C*; ne peut, *M, P.*

⁶⁻⁷ il autre chose ne cleyme et si noun com persone, *M.* ⁸⁻⁹ alez a deu sanz recouerer damages vers ly pur ceo qil ne fut nul destoubance, *C*; et alez vous a dieu saunz recouerir damages vers luy par qi etc., *P.*

you have your recovery by the *quare non admisit*. And so for no reason at all can you assign any disturbance in us that could be tried in this Court.

BEREFORD C.J. Seeing that he claimeth naught in the advowson, but saith that he is parson and imparsonnee, and to naught else maketh any claim; and that you can allege no other disturbance in him than that he hath taken those delays which are allowed him by the law, the which is no disturbance when he is claiming naught in the advowson, the Court awards that you have a writ to the Bishop etc., and that Geoffrey go free, and that you recover no damages etc.

Notes from the Record.

I.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 90d., Staffordshire.

Robert the Champion and Agnes his wife in the octaves of St. Martin last past presented themselves by their attornies here in Court against Master Richard of Havering, John of Leek, Elect of Dublin, and Thomas of Stretton, chaplain, of a plea that these permit them to present a fit person to the vicarage of the chapel of Stretton that is vacant and is regardant to their donation etc. And these do not come. And the Sheriff had been charged aforetime to distrain the aforesaid Master Richard by all his lands etc. and also to attach the aforesaid John and Thomas that they should be here on the aforesaid octaves of St. Martin etc. And the Sheriff hath done naught thereof, but he sendeth word that the aforesaid Master Richard, John and Thomas have naught etc. whereby they could be attached or distrained etc., so that it was then testified in Court here that the aforesaid Master Richard, John and Thomas had at Penkridge within the same county enough etc. By reason of which testimony, though it was then irregularly admitted by the Court, the Sheriff was charged as before etc. to distrain the aforesaid Master Richard by all his lands etc. And likewise, as before, to attach the aforesaid John and Thomas that they be here on this day, to wit, a fortnight after St. Hilary's Day. And the aforesaid Robert and Agnes now come by the attorney of the aforesaid Agnes etc. And the Sheriff hath not sent writs etc. And Robert and Agnes do say that process in this plea against Master Richard and the others hath been wrong and irregular etc., for they say that when the writ of distress against the same Master Richard etc. was returned here in Court on the aforesaid octaves of St. Martin they, the aforesaid Robert and Agnes, ought to have had a writ to the Bishop by reason of the default of the same Master Richard etc. directing the Bishop, the claim of the said Master Richard notwithstanding, to admit etc. a fit person to the aforesaid vicarage on the presentation of the same Robert and Agnes; and likewise after the writ of attachment etc. was returned against the said Elect

Notes from the Record—*continued.*

fuissent attachiati in hac parte predicti Robertus et Agnes debent habuisse breue ad distringendum ipsos etc. prout moris est etc. vnde iidem Robertus et Agnes modo petunt illud idem etc. scilicet breue Episcopo versus ipsum Magistrum Ricardum etc. et breue vicecomiti quod distringat alios etc. Et quia predictus processus hic usque ad prefatas Octabas Sancti Martini minus rite continuatus fuit per surrepcionem Curie vt predictum est per quod expediens est quod Curia hic huiusmodi defectum et surrepcionem emendet etc. Consideratum est quod predicti Robertus et Agnes recuperent presentacionem suam ad predictam vicariam per defaultam ipsius Magistri Ricardi quam fecit ad predictas Octabas Sancti Martini etc. et dampna sua ad valorem medietatis predictae vicarie eo quod tempus semestre nondum etc. Et habeant breue loci Diocesano quod non obstante reclamacione ipsius Magistri Ricardi ad presentacionem ipsorum Roberti et Agnetis ad predictam vicariam idoneam personam admittat etc. Et predictus Magister Ricardus in misericordia etc. Et preceptum est vicecomiti quod inquiret de valore predictae vicarie etc. quantum valeat in omnibus exitibus etc. Et inquisitionem etc. scire faciat hic a die Pasche in xv. dies etc. Sub sigillo etc. et sigillis etc. Et similiter preceptum est vicecomiti quod distringat predictos Electum et Thomam per omnes terras etc. Et quod de exitibus etc. Et quod habeat corpora eorum hic ad prefatum terminum ad respondendum predictis Roberto et Agneti de predicto placito etc. Postea predictus Robertus venit Et dixit quod ipse non vult sequi breue de dampnis etc. Set ea remisit etc. Ideo nullum fiat breue de dampnis etc.

II.

De Banco Rolls, Easter, 5 Edw. II. (No. 192), r. 20, Staffordshire.

Iohannes de Leek Electus Dublinensis et Thomas de Strettone capellanus in misericordia pro pluribus defaultis etc.

Iidem Iohannes et Thomas summoniti fuerunt ad respondendum Roberto le Champyoun et Agnete vxori eius de placito quod permittant ipsos presentare idoneam personam ad vicariam capelle de Strattone que vacat et ad suam spectat donacionem etc. Et vnde iidem Robertus et Agnes per ipsum Robertum attornatum ipsius Agnetis dicunt quod quidam Ricardus de Strattone primus vir ipsius Agnetis fuit seisitus de Manerio de Strattone cum pertinenciis ad quod aduocacio vicarie capelle predictae pertinet etc. qui quidem Ricardus ad vicariam capelle predictae presentauit tempore pacis tempore domini Henrici auī domini Regis nunc quendam Willelmum le fyz sweyn clericum suum qui ad presentacionem suam fuit admissus et institutus etc. et dicunt quod idem Ricardus Manerium illud cum pertinenciis ad quod etc. dedit cuidam Ricardo filio ipsius Ricardi de Strattone tenendum sibi et heredibus suis etc. Ita quod post mortem predicti Ricardi de Strattone quondam viri etc. idem Ricardus filius Ricardi assignauit

Notes from the Record—continued.

and Thomas, even though they were not attached in this matter, the aforesaid Robert and Agnes ought to have had a writ to distrain them etc., as the practice is etc. Wherefore the same Robert and Agnes do now claim the same, to wit, a writ to the Bishop against the same Master Richard etc. and a writ to the Sheriff directing him to distrain the others etc. And seeing that the process here on the aforesaid octaves of St. Martin was improperly continued through the irregularity of the Court, as is aforesaid, it is therefore fitting that the Court here make good etc. a defect and irregularity of this kind. It is considered that the aforesaid Robert and Agnes recover their presentation to the aforesaid vicarage by the default of the said Master Richard which he made on the aforesaid octaves of St. Martin etc., and their damages to the amount of the value of a moiety of the aforesaid vicarage, a space of six months not having yet etc. And they are to have a writ to the Diocesan of the place that, the claim of the same Master Richard notwithstanding, he is to admit a fit person to the aforesaid vicarage upon the presentation of the same Robert and Agnes. And the aforesaid Master Richard is in mercy etc. And the Sheriff is charged to inquire of the value of the aforesaid vicarage etc. how much it be worth from all sources etc. And he is to make return of his inquisition here on the quindene of Easter etc. Under the seal etc. and the seals etc. And the Sheriff is likewise charged to distrain the aforesaid Elect and Thomas by all their lands etc. And to make return of the issues etc. And to have their bodies here at the aforesaid term to answer the aforesaid Robert and Agnes of the aforesaid plea etc. Afterwards the aforesaid Robert came and said that he doth not wish to prosecute a writ for damages, but forgiveth these. So no writ for damages is to issue.

II.

De Banco Rolls, Easter, 5 Edw. II. (No. 192), r. 20, Staffordshire.

John of Leek, Elect of Dublin, and Thomas of Stretton, Chaplain, are in mercy for several defaults etc.

The same John and Thomas were summoned to answer Robert the Champion and Agnes his wife of a plea that they permit them to present a fit person to the vicarage of the chapel of Stretton which is vacant and is regardant to their donation etc. And in respect of this the same Robert and Agnes by the same Robert, attorney of the same Agnes, do say that a certain Richard of Stretton, first husband of the same Agnes, was seised of the manor of Stretton, together with its appurtenances, to which the advowson of the vicarage of the chapel aforesaid doth belong; which Richard in time of peace in the time of the lord Harry, grandfather of the lord King that now is, did present a certain William the son of Sweyn, his clerk, to the vicarage of the aforesaid chapel, who upon his presentation was admitted and instituted etc.; and they say that the same Richard did give that manor together with its appurtenances, to which etc., to a certain Richard, the son of that same Richard of Stretton, to hold to him and his heirs etc., so that after the death of the aforesaid Richard of Stretton that was aforetime husband etc. the

Notes from the Record—*continued.*

ipsi Agneti terciam partem predicti Manerii cum pertinenciis tenendam nomine dotis etc. et vacante predicta vicaria per mortem predicti Willelmi etc. predictus Ricardus filius Ricardi presentauit ad eandem vicariam etc. quendam Willelmum de Bedenhale clericum suum qui ad presentationem suam fuit admissus et institutus etc. tempore pacis tempore domini Edwardi Regis patris domini Regis nunc etc. Et postmodum vacante predicta vicaria per priuacionem ipsius Willelmi de Belde [*sic*] idem Ricardus filius Ricardi presentauit ad eandem quendam Robertum Pace qui ad presentationem suam fuit admissus et institutus etc. tempore predicti domini Edwardi Regis patris etc. per cuius mortem predicta vicaria modo vacat per quod ad ipsos Robertum et Agnetem ratione predictae dotis ipsius Agnetis nunc in ista tertia vacacione contingente post mortem predicti Ricardi quondam viri etc. pertinet ad predictam vicariam etc. presentare vnde dicunt quod per hoc quod predicti Iohannes et Thomas ipsos inde iniuste impediunt deteriorati sunt et dampnum habent ad valenciam Centum librarum Et inde producunt sectam etc.

Et Iohannes et Thomas per Willelmum de Ottele attornatum predicti Iohannis et Clementem di Woluerenhamptone attornatum predicti Thome veniunt Et predictus Thomas dicit quod ipse est vicarius capelle predictae et nichil clamat in aduocacione eiusdem capelle nisi tanquam clericus presentatus etc. vnde petit iudicium si huiusmodi breue competere versus eum etc. Et Iohannes dicit quod ipse est Archiepiscopus Dublinensis et Decanus de Pencreth et quod predicta capella de Strattonne est anexa decanatu sui predicto et quod ipse inuenit ecclesiam suam seisitam de capella predicta et vicariam eiusdem plenam de predicto Thoma ex collacione Magistri Ricardi de Haueringg nuper Electi predicti Archiepiscopatus vltimi predecessoris sui etc. Dicit eciam quod ipse et omnes predecessores sui Archiepiscopi Dublinenses qui Anglici fuerunt a tempore quo non extat memoria habere consueuerunt predictum Decanatum ad quem etc. tanquam pertinentem ad Archiepiscopatum suum predictum ex collacione domini Regis. Et si aliquis alius quam Anglicus creatus fuisset in Archiepiscopatum Dublinensem [Rex] et progenitores sui qui pro tempore fuerunt retinuerunt decanatum illum cum omnibus pertinenciis suis tanquam liberam capellam suam conferendum cui sibi placuerit etc. vnde dicit quod non potest ipsis Roberto et Agneti inde sine domino Rege respondere etc.

Et Robertus et Agnes dicunt quod predictus Iohannes iniuriam suam in hac parte per dominum Regem seu per aliquem alium excusare non potest seu diflugere quin eis inde respondere debeat Quia dicunt vt prius quod predictus Ricardus quondam vir ipsius Agnetis ratione predicti Manerii de Strattonne in manu sua existentis presentauit ad predictam vicariam Willelmum clericum suum tanquam pertinentem ad idem Manerium etc. et similiter predictus Ricardus filius Ricardi qui tenuit duas partes eiusdem Manerii post

Notes from the Record—continued.

said Richard son of Richard did assign a third part of the aforesaid manor with its appurtenances to this Agnes in name of dower etc. ; and upon the aforesaid vicarage becoming vacant by reason of the death of the aforesaid William etc. the aforesaid Richard the son of Richard did present to the same vicarage etc. a certain William of Bedenhale, his clerk, who upon his presentation was admitted and instituted etc. in time of peace, in the time of the lord Edward, King, father of our lord the King that now is etc. And the aforesaid vicarage afterwards becoming vacant by reason of the deprivation of the said William of Bedenhale, the same Richard the son of Richard presented a certain Robert Pace to the same vicarage, who upon his presentation was admitted and instituted in the time of the aforesaid lord King Edward, father etc., by reason of whose death the aforesaid vicarage is now vacant ; wherefore, by reason of the aforesaid dower of this Agnes, and that this is now the third vacancy since the death of the aforesaid Richard that was aforetime husband etc. it belongeth to these same Robert and Agnes to present to the aforesaid vicarage etc. : and touching this they say that by reason of the aforesaid John and Thomas wrongfully impeding them they have suffered loss and have damage in the sum of one hundred pounds ; and thereof they produce suit etc.

And John and Thomas, by William of Otley, the attorney of the aforesaid John, and Clement of Wolverhampton, the attorney of the aforesaid Thomas, do come ; and the aforesaid Thomas doth say that he is vicar of the aforesaid chapel, and that he doth claim naught in the advowson of the same chapel except as clerk presented etc. ; wherefore he asketh judgment whether a writ of this nature properly lieth against him. And John doth say that he is Archbishop of Dublin and Dean of Penkridge, and that the aforesaid chapel of Stretton is annexed to his deanery aforesaid, and that he found his church seised of the chapel aforesaid and the vicarage of the same filled with the aforesaid Thomas by the collation of Master Richard of Havering, lately Elect of the Archbishopric aforesaid, and his own immediate predecessor etc. And he saith that he himself and all his predecessors, Archbishops of Dublin, that have been Englishmen, from a time higher than memory, have used to have the aforesaid Deanery, to which etc., as appurtenant to their Archbishopric aforesaid by collation of the lord King, and if any other than an Englishman were created Archbishop of Dublin, then the King and his ancestors in times past did retain that deanery together with all its appurtenances as their free chapel, to confer it upon whomsoever they would etc. Wherefore he doth say that he cannot answer these same Robert and Agnes without the lord King etc.

And Robert and Agnes do say that the aforesaid John cannot excuse nor exculpate himself of his wrongdoing in this matter either by the lord King or by any other, but ought to answer them thereof ; for they say, as before, that the aforesaid Richard that was aforetime husband of this Agnes, by reason of the aforesaid manor of Stretton being in his possession did present William, his clerk, to the aforesaid vicarage, as appurtenant to the same manor etc. ; and, for like reason, the aforesaid Richard, son of Richard, who

Notes from the Record—continued.

mortem predicti Ricardi quondam [etc.] bis et successiue presentauit prefatos clericos suos ad eandem vicariam qui ad presentationes suas fuerunt admissi et instituti racione earundem duarum parcium etc. Ita quod nunc in ista tertia vacacione contingente post mortem predicti Ricardi quondam viri etc. pertinet ad ipsos Robertum et Agnetem racione predictae tercie partis predicti Manerii quam ipsi tenent in dotem ipsius Agnetis ad eandem vicariam presentare et hoc parati sunt verificare sicut Curia consideret ad quam verificationem predictus Iohannes non respondet etc. et per consequens idem Iohannes de iniuria sua propria ipsos impedit in hac parte vnde petunt iudicium etc.

Dies datus est eis de audiendo iudicio suo hic a die sancte Trinitatis in .xv. dies saluis partibus hinc inde racionibus suis dicendis etc. Postea ad diem illum venerunt partes predictae per attornatos suos Et predictus Iohannes dicit quod predictus Robertus pace quondam vicarius capelle predictae per cuius mortem vicaria illa modo vacat non fuit admissus et institutus in eadem ad presentationem predicti Ricardi sicut predicti Ricardus et Agnes dicunt Immo idem Robertus Pace habuit vicariam illam ex collacione cuiusdam Iohannis de Saumpford quondam Archiepiscopi Dublinensis predecessoris etc. tanquam aduocati eidem capelle etc. Et de hoc ponit se super patriam Et Robertus et Agnes similiter Ideo preceptum est vicecomiti quod venire faciat hic in Octabis sancti Michaelis xij. etc. per quos etc. Et qui nec etc. ad recognizandum etc. Quia tam etc. Postea in Crastino sancti Iohannis Baptiste anno Regis nunc sexto veniunt partes predictae per attornatos suos Et similiter Iuratores de consensu parcium electi Qui dicunt super sacramentum suum quod predictus Robertus Pace presentatus fuit ad predictam vicariam ad presentationem predicti Ricardi Et per ordinarium eiusdem loci admissus et institutus in eadem et non ex collacione predicti Iohannis de Saumpford Ideo consideratum est quod predicti Robertus et Agnes recuperent inde presentationem suam versus eum ad predictam Capellam Et habeant breue Decano de Pencreth quod non obstante reclamacione predicti Iohannis quin ad presentationem predictorum Roberti et Agnetis ad predictam vicariam idoneam personam admittat Et eciam dampna sua ad valorem Capelle duorum annorum eo quod tempus semestre elapsum est que taxantur per Iuratores ad decem libras Et Iohannes in misericordia etc.

Dampna .x.li. vnde Clericis .c.s.

Notes from the Record—*continued.*

held two parts of the same manor after the death of the aforesaid Richard, aforetime etc., did present twice and in succession his clerks aforesaid to the same vicarage, who upon his presentations were admitted and instituted, in virtue of the same two parts etc.; so that now, in this the third vacancy that hath happened since the death of the aforesaid Richard, aforetime husband etc., it belongeth to these same Robert and Agnes to present to this same vicarage in right of the aforesaid third part of the aforesaid manor which they hold as the dower of the same Agnes; and this they have offered to aver as the Court may consider. To which averment the aforesaid John doth not answer etc., and therefore the same John doth in this matter impede them of his own tort. And of this they ask judgment etc.

A day is given them to hear their judgment here on the quindene of the Holy Trinity, their rights to further arguments being reserved to the parties. Afterwards the aforesaid parties do come on that day by their attornies, and the aforesaid John doth say that the aforesaid Robert Pace, aforetime vicar of the aforesaid chapel, by whose death that vicarage is now vacant, was not admitted and instituted into the same upon the presentation of the aforesaid Richard, as the aforesaid Richard and Agnes do say; but the same Robert Pace had that vicarage by the collation of a certain John of Sanford,¹ that was aforetime Archbishop of Dublin, predecessor etc., as patron of that same chapel etc. And of this he doth put himself upon the country. And Robert and Agnes do likewise. So the Sheriff is charged that he make come here in the octaves of St. Michael twelve etc. through whom etc., and who are neither etc. to make recognition etc., because both etc. Afterwards on the morrow of St. John Baptist, in the sixth year of the King that now is, the parties aforesaid do come by their attornies. And likewise the jurors, chosen by assent of the parties; and these upon their oath do say that the aforesaid Robert Pace was presented to the aforesaid vicarage on the presentation of the aforesaid Richard, and was by the Ordinary of the place admitted and instituted into the same, and not by the collation of the aforesaid John of Sanford. Therefore it is considered that the aforesaid Robert and Agnes do recover their presentation to the aforesaid chapel against him. And they are to have a writ to the Dean of Penkridge that, the claim of the aforesaid John notwithstanding, he is to admit a fit person to the same vicarage upon the presentation of the aforesaid Robert and Agnes. And further, they are to have their damages in the amount of two years' value of the chapel, seeing that more than six months have gone by²; and these are assessed by the Jurors at ten pounds. And John is in mercy etc.

Damages: ten pounds, out of which a hundred shillings to the clerks.

¹ John of Sanford was nineteenth Archbishop, 1284–1297.

² See the Statute of Westminster II. cap. v.

8. THE PRIOR OF COVENTRY *v.* WALD.¹I.²

Bref de droit de auowesoun de eglise ou la vewe fut demande et habuit pur ceo qil auoient .iiij. villes nomes par cel noun qe la ville fut vbi ecclesia fuit situata.

Et Nota ex isto placito qe la ou home lie esplees en droit de la persone home ne dirra mye come de fee et de droit pur ceo qe profit de seinte eglise nest pas fee mes droit.

Ceo vous monstre le Priour de Couuintre³ qe ci est qe Iohan de Wald⁴ qe illoques est atort ly deforce Lauowesoun de vne eglise de Stantoun Et pur ceo a tort qe ceo est son droit et le droit de sa eglise de nostre dame [sic] de N.⁵ dont vn son predecessour I. par noun fu seisi come de ⁶fee et de droit de sa eglise etc. en temps de pees etc. et en mesme cel temps presenta a mesme cele eglise vn son clerk Iohan⁷ par noun qe a son presentement fu ressu en temps de pees etc. le quel clerk prist les esplees come en oblaciouns ⁸ gros dysmes ⁹ et menuz dimes¹⁰ et en autre manere dissue del eglise amontant ¹¹ a demi marc et plus¹² come del droit de sa eglise auandit et qe tiel soit le droit le Priour et le droit de sa eglise de N. en ad sute et direyne.

¹³ Et Nota qe en esplees prendre home ne deit pas dire qe le clerk prist les esples come de fee et de droit pur ceo qe profit de saint eglise nest pas fee del eglise mes droit.¹⁴

¹⁵ Herle defendi etc. et le droit le Priour et le droit de sa eglise de nostre dame de N.¹⁶ et demanda la vewe.

Scrope. La vewe ne deuetz auoir qil nad forques vn eglise en Stanton¹⁷ par qi ele nest pas necessarie.

Herle. Il sont .iiij. villes en le conte qe portent tiel noun et nous ne poms sauoir en quel vous faites vostre demande.

Et ea racione non potuit dedici.¹⁸

¹⁹ Heruy. Il demande la vewe pur auer vn assogne et vn excepcion apres quod diceret il batera le bref pur ceo qilz sunt .iiij. viles en mesme le counte qe homme apele Stanton et le bref ne fet pas mencion en certain en queu de .iiij. viles la Eglise est.

Et pus le Prior pria conge de quere meillor bref etc. et habuit.²⁰

¹ Reported by *B, C, D, G, P, T* and *X*. ² Text of (I) from *D*, collated with *G*. The headnote in *G* is: Bref de dreyt de aduoweson ou la vewe fut demande et le bref abatist. ³ Monemuth par son attornum, *G*. ⁴ Langeton, *G*. ⁵ Mone-mith, *G*. ⁶⁻⁷ soun dreyt et le dreyt etc. vt supra en temps de pes en temps le Roy Henri etc. qe presenta vn son clerk E., *G*. ⁸ *G* adds obuencioms. ⁹⁻¹⁰ added from *G*. ¹¹⁻¹² from *G*; *D* has etc. ¹³⁻¹⁴ *G* omits. ¹⁵⁻¹⁶ Ion de Langetone defendit tort etc. et defendra ou et qant deuera etc., *G*. ¹⁷⁻¹⁸ et issi estes vous asset acerte de nostre demande iugement etc. *Herle* il y ad .iiij. Stantonz ouek Eglise en mesme le Counte par qi la vewe est necessarie iugement, *G*. ¹⁹⁻²⁰ added from *G*; *D* omits.

8. THE PRIOR OF COVENTRY *v.* WALD.

I.

Writ of right of the advowson of a church, where view was asked and allowed, because there were three villis having the same name as the vill where the church was.

And note from this plea that where a man taketh esplees in right of his parsonage he will not say 'as of fee and of right,' for the profits of Holy Church are not of fee, but right.

This sheweth you the Prior of Coventry who is here that John of Wald, who is there, doth wrongfully deforce him of the advowson of a church of Stanton, and wrongfully because it is his right and the right of his church of Our Lady of N., of which his predecessor, J. by name, was seised as of the fee and right of his church etc. in time of peace etc., and in that same time he did present to that same church his clerk, John by name, who, upon his presentation, was received in time of peace etc.; the which clerk took the esplees as oblations, great tithes, lesser tithes and other profits of the church, amounting to half a mark and more, as in right of his church aforesaid; and that such is the right of the Prior and the right of his church of N. he hath suit and proof.

And note that in laying the taking of esplees one must not say that the clerk took the esplees as of fee and of right, because the profit of Holy Church is not the fee of the church but the right.

Herle denied etc. and the right of the Prior and the right of his church of Our Lady of N., and claimed view.

Scrope. You ought not to have view, for there is but one church in Stanton, and therefore it is not necessary.

Herle. There are three villis in the county which are called by that same name, and we cannot know in which of them you make your demand.

And in this he could not be contradicted.

STANTON, J. He demandeth the view so that he can have an essoin and an exception afterwards—meaning that he will abate the writ on the ground that there are three villis in the same county that are called Stanton, and the writ does not state in certain in which of the three villis the church is.

And then the Prior prayed leave to sue out a better writ, and he had it.¹

¹ By the provisions of the Statute *de visu terrae* (of uncertain date) view was not to be allowed in a writ of advowson of a church unless there were more churches than one in the same vill and all of the same Saint.

II.¹

Bref de droit de auowesoun la vewe demande etc.

Vn homme porta soun bref de droit de auowesoun del Eglise [de Stantone].

Herle demanda la vewe.

Denom. La vewe ne deuez auer qar il ny ad forsque vne Eglise en Stantone iugement etc.

Herle. Illy ount .iiij. Stauntones en mesme la Counte etc. et nous ne pooms estre acerte etc. saunz la vewe iugement etc.

Heruy. Sil eit la vewe ore est vn delay qe vous ne ly pooez oster de la vewe et apres la vewe il abatara vostre bref car vous deussez auer dit in Stauntone iuxta etc.

Denom conge de querrer meillor bref et habuit etc.

9. THORNSETT v. WHAITE.²I.³

Vne femme porte son bref de Douwer vers ⁴vn homme⁵ et demanda certeynz tenementz del douwement son baroun qe la douwa al hus de moustre qant il la esposa.

Toud. Douwere ne deit ele auer qar ⁶son baroun⁷ ne la esposa vnqes prest etc.

Scrop. ⁸Cople a ly en leau⁹ matrimoine prest etc. par la ou nous deuoms.

Toud. A ceo la ne deuetz auener qar nous auoms tendu vn issue qapent a la conisaunce de cest court dount par vostre issue qapent a la chrestiene court ne tendrez¹⁰ pas conisaunce de ceste court.

Scrop. Cest commune issue copletz a li etc. dount pur chaunger vne parole a dire qil ne lesposa vnqes taunt amount qele ne fut pas coplez a ly en leal matrimoine iugement si par chaunge dun parole put il ouster conisaunce qapent a la court chrestiene.¹¹

Herle. Par la ou homme affie¹² vn [*sic*] femme et vnqes ne la esposa si nous ne pooms auer tiel auerement ¹³si serra ele¹⁴ maunde a la court chrestiene ¹⁵en qeu il¹⁶ tenent cel couenaunt¹⁷ matrimoine et

¹ Text of (II) from *M.*, *B.*, *C.*, *P.*, *T.* and *X.* are similar. ² Reported by *B.*, *D.*, *M.*, *P.*, *X.*, *Z.* Names of parties from the Record. ³ Text of (I) from *D.*, collated with *M.* and *P.* *B.* follows *D.* closely. ⁴⁻⁵ vne femme, *M.* ⁶⁻⁷ cely etc. *M.*, *P.* ⁸⁻⁹ acouplez a ly en leal, *M.* ¹⁰ tendi pas, *M.*; tonderez, *P.* ¹¹ *M.* and *P.* omit Chrestiene. ¹² affiaunce, *M.* ¹³⁻¹⁴ car si ele feut, *M.* ¹⁵⁻¹⁶ en qele cas ele, *M.*, *P.* ¹⁷ couenable, *M.*; couuable, *P.*

II.

Writ of right of an advowson, where view was asked.

A man brought his writ of right of the advowson of the church of Stanton.

Herle claimed the view etc.

Denham. You ought not to have the view, for there is but one church in Stanton. Judgment etc.

Herle. There are three Stanton in the same county etc., and we cannot be certified etc., without view. Judgment etc.

STANTON J. If he have a view now that is a delay, and you cannot oust him from his view; and after the view he will abate your writ, for you ought to have said Stanton near etc.

Denham asked leave to seek a better writ, and had etc.

9. THORNSETT v. WHAITE.¹

I.

A woman brought her writ of Dower against a man and claimed certain tenements by the endowment of her husband who dowered her at the door of the Church when he married her.

Toudeby. Dower she ought not to have, for her husband never married her. Ready etc.

Scrope. Joined to him in lawful matrimony. Ready etc. in such way as we ought.

Toudeby. To that averment you ought not to get, for we have tendered an issue that lieth within the cognisance of this Court, while you by your issue, which appertaineth to Court Christian, are pleading outside the cognisance of this Court.

Scrope. Joined to him etc. is a common issue. To change a word, then, and to say that he never married her comes to the same thing as saying that she was not joined to him in lawful matrimony. Judgment whether by changing a word he can withhold his plea from Court Christian, to whose cognisance it appertaineth.

Herle. If we cannot have such averment in the case where a man plighteth his troth to a woman whom he doth never marry, she will be referred to Court Christian, which doth hold such a covenant to be

¹ See the *Introduction*, p. xvi.

issint recouereit ele douwere qe serreit duresse iugement ¹de puis qe nous tendoms auerer qil ne lesposa vnqes qel auerement il refusent iugement etc.²

Malm. Sil la fiaunca et ne lesposa vnqes dites cel la qar par³ vostre auerement qe vous auetz vncore tendu ne poietz doner conisaunce a cest court.

Toud. Douwere ne put ele auer⁴ si noun par raison desposailles mes par raison de cel ne put ele douwer demander qe son baroun ne la esposa vnqes qar vostre resonable demoustraunce veot ⁵qil vous douwa⁶ al hus de moustre qant qant [*sic*] il la esposa la vous dioms qil ne la esposa vnqes prest etc.

Berr. Anciene ley est⁷ et vsee deuaunt ces houres deuaunt⁸ sage gent qen tieu cas conisaunce apent ala court chrestiene qar esposailles et matrimoine se vount en vn la qel deuaunt ⁹vsee nous ne voloms poynt chaunger mes si vous voletz dire qele ne fut vnqes sa femme com son bref suppose dites cel la et vous serretz ressu¹⁰ et si noun respounetz a lour dit.

Et fut chace par *Berreford* a respoundre al issue qe *Scrope* tendit qe¹¹ copletz a li en leal matrimoine prest etc. ¹²par la ou nous vous dyoms [*sic*].¹³

Toudeby. Nient copletz a ly en leal matrimoyne prest etc.

Et habuit breuem¹⁴ ad episcopum Lincolnensem etc.

II.¹⁵

Dower.

En dower.

Toud. A. de qi dowement ele demande ne la esposa vnqes prest etc.

Berr. Vostre chaunge des paroles ne tondra pas la conisaunce a la courte chrestiene mes vous poez dire qil [*sic*] ne fut vnqes sa femme com son bref suppose etc.

Scrop. Tant amounte qe vnqes couple etc. cople prest etc.

Et alii econtra.

III.¹⁶

Dowere ou le tenant tendi dauerrr qe celui de qi dowement etc. ne la esposa vnqes et non potuit admitti.

En vn bref de dowere le tenant tendi dauerrr qe celui qele noma son baroun ne la esposa vnqes prest etc. la femme dit qele fust acouple

¹⁻² Supplied from *M* and *P*. ³ *P* omits. ⁴ demander, *M*, *P*. ⁵⁻⁶ qe vous fustes dowe, *M*, *P*. ⁷ ad este, *M*. ⁸ de, *M*, *P*. ⁹⁻¹⁰ *M* omits.
¹¹ *M* adds vnqes. ¹²⁻¹³ Added from *M*. ¹⁴ *M* omits. ¹⁵ Text of (II) from *X*. ¹⁶ Text of (III) from *Z*.

marriage ; and so she would recover dower, which would be a hardship. Since we offer to aver that he never married her and they refuse that averment, judgment etc.

Malberthorpe. If he plighted her his troth and did never marry her, say so ; for by such averment as you have yet offered you cannot give cognisance to this Court.

Toudeby. She cannot have dower save by reason of marriage ; and she cannot claim dower for this reason, for her husband never married her ; for though in your reasoned demonstrance you said that he dowered her at the church door when he married her, we tell you that he never did marry her. Ready etc.

BEREFORD C.J. According to ancient law and the use of learned men of old, cognisance of such cases as this belongeth to Court Christian, for espousal and marriage come to the same thing ; the which ancient use we are not careful to change. If, however, you wish to say that she was never his wife, as her writ assumeth her to have been, say so, and you will be received : and if not, answer what they say.

And he was forced by BEREFORD C.J. to answer the issue which *Scrope* tendered, that she was joined to him in lawful matrimony, ready etc. there where we ought.

Toudeby. Never joined to him in lawful matrimony, ready etc.

And she had a writ to the Bishop of Lincoln etc.

II.

Dower.

In a writ of dower.

Toudeby. A., of whom she claimeth endowment, never married her. Ready etc.

BEREFORD C.J. Your change of words will not remove the matter from the jurisdiction of Court Christian ; but you can say that she was never his wife as her writ supposeth etc.

Scrope. That amounts to saying that they were never married etc. Ready etc. that they were married.

And the other side joined issue.

III.

Dower, where the tenant tenders an averment that he of whose endowment dower was claimed never married the plaintiff ; but this could not be received.

In a writ of dower the tenant tendered an averment that he whom the claimant described as her husband never married her ; ready etc. ;

a lui en loial matrimoigne prest etc. la ou auerrer le dust qar des esposailles ne de matrimoigne ceste Court ne purra pas conustre et le tenant allegge meschief si tiel issue ne serra ressu qar si homme affiaunce vne femme la Court Christiene tient cele Couenant Matrimoigne par qi etc. et non obstante fust chace a dire vnqes acouple Et credo qen tiel cas les esposailles ne serroit pas troue etc.

Notes from the Record.

I.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 95d., Lincolnshire.

Radulphus de Thornsete et Agnes vxor eius per attornatum suum optulit se quarto die versus Willelmum Whaite de Grantham de placito tercię partis sex acrarum terre cum pertinenciis in Gun Wardby et Manthorpe quam clamant in dotem etc. versus eum et Iohannam vxorem eius. Et ipse non venit. Et tam ipse quam predicta Iohanna alias fecerunt defaltam in Curia hic scilicet a die sancti Michaelis in xv. dies proximo preterito postquam comparauerunt in Curia et placitassent [*sic*] cum predictis Radulpho et Agnete et posuissent se hinc inde in Iuratam patrie etc. Ita quod tunc preceptum fuit vicecomiti quod caperet predictam terciam partem in manum domini Regis. Et quod summoneret eos quod essent hic ad hunc diem scilicet a die sancti Hillarii in xv. dies prece petentis etc. audiendum Iudicium suum etc. Et vicecomes nunc testatur quod terra capta est etc. Et summoniti etc. Et modo venit predicta Iohanna vxor etc. Et dicit quod predicta terra est Ius suum etc. Et petit quod pro defalta viri sui non amittat Ius suum set quod admittatur etc. Et admittitur etc. Vnde predicti Radulphus et Agnes per attornatum suum petunt versus eam predictam terciam partem etc. vt dotem ipsius Agnetis etc. ex dotacione Roberti Pygoun quondam viri etc.

Et Iohanna dicit quod ipsa non debet inde dotem habere etc. Dicit enim quod ipsa Agnes nunquam fuit predicto Roberto Pygoun legitimo matrimonio copulata etc. Et hoc parata est verificare vbi et quando etc.

Et Radulphus et Agnes dicunt quod ipsa Agnes desponsata fuit predicto Roberto apud Grantham in Comitatu predicto ad ecclesiam sancti Wulframii eiusdem ville Et hoc pretendunt verificare etc.

Et quia huiusmodi cause cognicio ad forum spectat ecclesiasticum etc. Mandatum est Episcopo Lincolniensi quod vocatis coram eo convocandis rei veritatem super hoc diligenter inquiret Et quid etc. constare faciat Iusticiariis hic a die sancte Trinitatis in xv. dies prece petentis per literas suas patentes etc. Idem dies datus est partibus predictis etc. ad quem diem Episcopus non misit breue Ideo sicut prius mandatum est ei quod vocatis coram eo convocandis rei veritatem super hoc diligenter inquiret Et quid

and the woman said that she was joined to him in lawful matrimony ; ready etc. to aver it where she ought ; for this Court cannot make recognition of espousals and marriages. The tenant objected that hardship would arise if such an issue were not received, for if a man plight troth to a woman the Court Christian looketh upon such covenant as a marriage, wherefore etc. ; but, this notwithstanding, he was made to say ‘ never joined.’ And I believe that in such a case espousals would not be found etc.

Notes from the Record.

I.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 95d., Lincolnshire.

Ralph of Thornsett and Agnes his wife presented themselves by their attorney on the fourth day against William Whaite of Grantham on a plea of the third part of six acres of land, with the appurtenances, in Gonerby and Manthorpe, which they claim from him and Joan his wife as the dower etc. And he doth not come. And at other time both he and the aforesaid Joan made default in Court here, to wit, on the quindene of St. Michael last past after that they had appeared in Court and pleaded with the aforesaid Ralph and Agnes and put themselves touching this on a jury of the country etc. The Sheriff was therefore charged to seize the aforesaid third part into the hand of our lord the King, and to summon them to be here on this day, to wit, on the quindene of St. Hilary, on the prayer of the plaintiff etc. to hear their judgment. And the Sheriff doth now testify that the land hath been seized etc. ; and that William and Joan have been summoned etc. And now cometh the aforesaid Joan, wife etc. And she saith that the aforesaid land is her right etc. ; and she asketh that she may not lose her right by reason of her husband’s default, but that she may be received etc. And she is received etc. And the aforesaid Ralph and Agnes by their attorney claim from her the aforesaid third part etc. as the dower of this Agnes etc. by the endowment of Robert Pygoun that was aforetime her husband.

And Joan saith that she ought not to have dower thereof ; for she saith that the aforesaid Agnes was never joined in lawful matrimony to the aforesaid Robert Pygoun. And this she is ready to aver where and when etc.

And Ralph and Agnes say that this same Agnes was married to the aforesaid Robert at Grantham in the county aforesaid in the church of St. Wulfram in that same vill. And this they offer to aver etc.

And because recognition of a cause of this nature is regardant to the ecclesiastical court etc. therefore word is sent to the Bishop of Lincoln that having summoned before him such as ought to be summoned he diligently inquire of the truth of this matter and certify the Justices here a fortnight after the Day of the Holy Trinity, by his letters patent, of what etc., at the prayer of the claimant. The same day is given to the aforesaid parties, on which day the Bishop sent no letter ; so, as before, word is sent to him that, having summoned before him such as ought to be summoned, he diligently inquired of the truth of this matter and certify the Justices here of what etc.

Notes from the Record—continued.

etc. constare faciat hic a die sancti Michaelis in xv. dies etc. Idem dies datus est partibus predictis etc. Postea ad diem illum venerunt predicti Radulphus et Agnes per Nicholaum de reppplinghale attornatum suum et optulerunt se iiij. die versus predictam Iohannam de predicto placito Et ipsa non venit Et super hoc Episcopus Lincolniensis mandat Iusticiis hic per literas suas patentes quod vocatis coram eo vocandis rei que veritate super premissis diligencius inquisita inuenit quod predicta Agnes dum vixit fuit predicto Roberto legitimo matrimonio copulata ideo consideratum est quod predicti Radulphus et Agnes recuperent inde seisinam suam versus predictos Willelmum et Iohannam per defaultam etc. Et Willelmus et Iohanna in misericordia. Et super hoc predicti Radulphus et Agnes dicunt quod predictus Robertus primus vir obiit seisitus de predictis tenementis Et petunt dampna sibi adiudicari etc. Ideo preceptum est vicecomiti quod per sacramentum proborum et legalium hominum de Comitatu suo diligenter inquirat si Idem Robertus obiit inde seisitus etc. Et si etc. tunc inquirat que dampna Et ea que per inquisitionem illam inuenerit scire faciat hic a die sancti Hillarii in xv. dies distincte et aperte sub sigillo etc. et sigillis etc. Postea in octabis Sancti Michaelis anno regni domini Regis nunc septimo venerunt predicti Radulphus et Agnes per Nicholaum de Repinghale attornatum suum Et vicecomes misit inquisitionem que dicit quod predictus Robertus Pygon quondam vir etc. obiit seisitus de quinque acris terre et dimidio cum pertinenciis tantum in dominico suo vt de feodo ad dampnum ipsorum Radulphi et Agnetis quatuordecem solidorum Ideo fiat ei breue etc. Et qualiter etc. scire faciat hic a die sancti Hillarii in xv. dies etc.

I.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 135 d., Lincolnshire.

Preceptum fuit vicecomiti sicut pluries quod cum Radulphus de Thornsete et Agnes vxor eius in Curia Regis hic recuperauerunt seisinam suam versus Thomam Payn de terciā parte sex acrarum terre cum pertinenciis in Gun Wardby et Manthorpe Et versus Iohannem Morce de terciā parte sex acrarum terre cum pertinenciis in eisdem villis Et versus Godekynum de Alemania et Matildam vxorem eius de terciā parte sex acrarum terre cum pertinenciis in eisdem villis Et versus Willelmum Crisping et Ceciliam vxorem eius de terciā parte sex acrarum terre cum pertinenciis in eisdem villis vt de dote ipsius Agnetis per defaultam ipsorum Thome Iohannis Godekini et Matilde Willelmi et Cecilie sicut pluries quod per sacramentum proborum et legalium hominum de Comitatu etc. diligenter inquireret si quidam Robertus Pycoun quondam vir ipsius Agnetis obiit seisitus de predictis tenementis cum pertinenciis. Et si per inquisitionem illam inuenerit quod predictus Robertus obiit seisitus de predictis tenementis cum pertinenciis in dominico suo vt de feodo tunc per eorum sacramentum diligenter inquireret que dampna predicti Radulphus et Agnes habuerunt occasione detencionis dotis predictę Agnetis. Et inquisi-

Notes from the Record—*continued*.

a fortnight after St. Michael's Day. The same day is given to the aforesaid parties etc. Afterwards upon that day the aforesaid Ralph and Agnes came by Nicholas of Rippingale their attorney and presented themselves on the fourth day against the aforesaid Joan of the aforesaid plea. And she doth not come. And upon this the Bishop of Lincoln sendeth word to the Justices here by his letters patent that having summoned before him those who ought to be summoned and the truth of the matter having been diligently inquired of, he found that the aforesaid Agnes was in her life time joined to the aforesaid Robert in lawful matrimony. Therefore it is considered that the aforesaid Ralph and Agnes recover their seisin thereof against the aforesaid William and Joan by default etc. And William and Joan are in mercy. And upon this the aforesaid Ralph and Agnes say that the aforesaid Robert, the first husband, did die seised of the aforesaid tenements, and they ask that damages be awarded them. So the Sheriff is charged that he diligently inquire by the oath of credible and law-worthy men of his county whether the same Robert died seised thereof etc. And if etc. then he is to inquire what damages. And what he shall have found by that inquest he is to make known here on the quindene of St. Hilary distinctly and fully under the seal etc. and the seals etc. Afterwards in the octaves of St. Michael in the seventh year of the reign of our lord the King that now is the aforesaid Ralph and Agnes came by Nicholas of Rippingale their attorney, and the Sheriff sent the inquisition which saith that the aforesaid Robert Pygon that was aforetime husband etc. died seised of five acres and a half of land, together with the appurtenances, only, in his demesne as of fee, to the damage of these same Ralph and Agnes of fourteen shillings. So a writ is to issue to him etc. And how etc. he is to make known here on the quindene of St. Hilary etc.

II.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 135 d., Lincolnshire.

The Sheriff was commanded *sicut pluries* that because Ralph of Thornsett and Agnes his wife had here in the Court of the King recovered their seisin of the third part of six acres of land with the appurtenances in Gonerby and Manthorpe against Thomas Payn, and of the third part of six acres of land with the appurtenances in the same vills against John Morce, and of the third part of six acres of land with the appurtenances in the same vills against Godkin of Alemane and Maud his wife, and of the third part of six acres of land with the appurtenances in the same vills against William Crispian and Cecily his wife, as of the dowry of the same Agnes, by the default of the same Thomas, John, Godkin and Maud, William and Cecily, to make diligent inquiry by the oath of credible and law-worthy men of the county etc. whether one Robert Pycoun that was aforetime husband of this same Agnes died seised of the aforesaid tenements with the appurtenances. And if by that inquest he shall find that the aforesaid Robert did die seised of the aforesaid tenements with the appurtenances in his own demesne as of fee, then he is to make diligent inquest by the oath of the same men what damage the aforesaid Ralph and Agnes have sustained by reason of the detention of the dowry of the aforesaid Agnes. And he was to return that inquest etc. here upon this

Notes from the Record—continued.

cionem etc. scire faceret hic ad hunc diem scilicet in octabis Sancti Hillarii. Et vicecomes modo nichil inde fecit nec breue etc. Ideo sicut pluries preceptum est vicecomiti quod per sacramentum proborum et legalium hominum de Comitatu suo diligenter inquirat si predictus Robertus Pycoun quondam vir ipsius Agnetis obiit seiscitus de predictis tenementis cum pertinenciis. Et si per inquisitionem illam inuenerit quod predictus Robertus obiit seiscitus de predictis tenementis cum pertinenciis in dominico suo tunc per eorum sacramentum diligenter inquirat que dampna predicti Radulphus et Agnes habuerunt occasione detencionis dotis predictae Agnetis etc. Et Inquisitionem etc. scire faciat hic a die Pasche in xv. dies etc. Et vicecomes sit etc.

10. GOLDINGTON v. BASSINGBOURNE.¹I.²

William de Goldingtone porta soun bref de conspiracy vers Ion de Bassigburne et autres .iiij. et se pleint qe atort aueint conspire a Chalmesford lan seconde cestui Roy vn statut Marchaund estre fait a Wyntone lan .xxv. le Roy pere cestui Roy en qel statut fut contenu qe Rauf le Gras dut estre tenuz et oblige a Richard le Gras son frere en deux milles liures par vertue de qel statut saunz le su Richard fut swy ceinz vn bref de execucion pur auer les terres et les tenemenz qe furent en la seisine le dit Richard [*sic*] le Iour de la conisaunce le quel Richard [*sic*] auoit lesse deux maners en C. a William de Goldigtone et en le noun Richard par les dyz Ion et les autres saunz su le dit Richard fust swyte fait tanqe les maners auanditz furent liurez et le dit Richard ces maners au dit Ion grauntereit pur le temps de la dette par qi mesme cestui William de Goldigtone suit deuant le Roy taunqe cel statut pur faus fut atteint atort et encontre la forme del statut³ de ceo nadguers purueu et a damage le dit William mille liures etc.

Scrop defendi tort et force et qanke est encountre la forme del statut et les damages William etc. et nentendom mie qe a teu counte deuent estre respoundu qar le bref volt qe Ion et les autres duissent auer conspire en lan seconde cestui Roy de vn statut fait en lan .xxv. le Roy Edouard pere etc. com iescon conspiracie et ordinaunce deuient estre precedent la chose conspire ou ordine etc. et demandoms iugement etc.

¹ Reported by *G, M, P, T, Y*. Names of the parties from the Record. ² Text of (I) from *Y* collated with *G*.

³ The relevant statutes are *Articuli super Cartas* (28 Edward I, c. 10), *Definitio Conspiratorum* (33 Edward I), and the *Statutum de Conspiratoribus* of uncertain date (*Statutes of the Realm*, vol. i. p. 216).

Notes from the Record—*continued*.

day, to wit, in the octaves of St. Hilary. And the Sheriff hath now done naught of all this nor hath sent a letter etc. So, *sicut pluries*, the Sheriff is commanded to make diligent inquest by the oath of credible and law-worthy men of his county whether the aforesaid Robert Pycoun that was aforetime husband of the same Agnes died seised of the aforesaid tenements with the appurtenances. And if by that inquest he shall find that the aforesaid Robert died seised of the aforesaid tenements with the appurtenances in his own demesne then he is to make diligent inquest by the oath of those men what damage the aforesaid Ralph and Agnes have sustained by reason of the detention of the dowry of the aforesaid Agnes etc. And he is to return the inquest here a fortnight after Easter. And the Sheriff is etc.

10. GOLDINGTON *v.* BASSINGBOURNE.¹

I.

William of Goldington brought his writ of conspiracy against John of Bassingbourne and three others and complained that they had at Chelmsford in the second year of this King by their conspiracy wrongfully procured to be made a statute merchant purporting to be made at Winchester in the twenty-fifth year of the King that was father of this King, in which statute it was recited that Ralph the Gras was held and bound to Richard the Gras his brother in two thousand pounds; and in virtue of this statute a writ of execution was sued out here, without the knowledge of Richard, to seize the lands and tenements that were in the seisin of the said Ralph on the day of the acknowledgement. The which Ralph had leased ² two manors in C. to William of Goldington, and suit was prosecuted in the name of Richard by the said John and the others, without the knowledge of the said Richard, until the aforesaid manors were delivered and the said Richard made to appear to grant them to the said John for the time of the debt. In consequence of all which this same William of Goldington sued before the King until this statute was attainted as false: wrongfully and against the form of the statute³ lately provided and to the damage of the said William of a thousand pounds etc.

Scrope denied wrong and force and whatever be against the form of the statute, and damage to William etc.; [and then said:] We do not think that he should be answered on such counting, for according to the writ John and the others did in the second year of the present King conspire of a statute made in the twenty-fifth year of King Edward that was father etc., and every conspiracy and contrivance must be precedent to the thing conspired or contrived etc., and we ask judgment etc.

¹ See the *Introduction*, p. xl.³ See note 3 on the opposite page.² *i.e.* subsequently to the forged acknowledgement.

Hle. Nostre plainte est qe vous fausement conspirates en lan seconde cesti Roy a Chelmesforde vn statut estre fait lan .xxv. a Edouard le pere etc. a Wyntone etc. qe ne fut nient fait et ceo fut atteint deuant le Roy.

Berr. a *Scrop.* Dites autre chose.

¹*Scrop.* Vncore demandoms iugement de cestui bref qar soun bref voet qe nous conspirames cesti statut a profit Richard nient nome a cestui bref iugement etc.

Herl. Nous auoms dit qe par vostre conspiracy et vostre faus alliaunce nous sumes endamage de mille liures etc. qe respounetz a ceo.

Scrop. Vous dites Ceste conspiracy estre fait a vous et a Richard et ne assinneez mie les damages a Richard mes a vous meymes iugement etc.

Hle. Nous dioms qe vous conspirates vn statut estre fait a Richard le quel ne fut vnqes fait par qi nous resumes damage.

Scrop. A cestui bref ne deuz estre respoundu qar en le comensment il nous fet conspiratours et en le parclos il nous fait procurours iugement de la variaunce etc.

Berr. Ces .vij.² aunz ne estudi ioe tant suz vn bref pur vostre dit qe rien ne vaut.

Herl. Nostre accion si est fundu suz .iij. choses La vne est qe vous conspirates entre vous a C. vn statut estre fait a Wyntone qe ne fut vnkes fait a Wyntone Lautre qe vous a nous enmachinastes trauaus et despenses La terce qe vous procurastes vne swyte vers nous par quele suite par iugement de ceste court nous fumes ouste de nos maners.

Scrop. Iugement ne deit est procure etc. einz deit estre de ley.

Berr. Tut ne seit le iugement par vous procure vous ³sauez la suit suz⁴ qi le iugement se fit et de vostre faus ordinaunce se pleinent il.

Hle. Par vostre faus alienaunce etc. et⁵ sur ceo procurastes vne suite estre fait ceinz en ceste court su qi vn Iugement se fit le quel iugement fust defait et pur vne deceit troue par vostre⁶ faus conspiracy.

Scrop. Donques poez vous auer vn bref de disseit iugement de cestui bref.

Herl. La disseit fut troue et atteint mes de ceo qe vous et les

¹ *G* here *prefixes* ad alium diem. ² xvi, *G.* ³⁻⁴ suistez la faucete sor, *G.*
⁵ qe, *G.* ⁶ bref, *G.*

Herle. Our plaint is that you falsely conspired at Chelmsford in the second year of the present King to procure a statute to be made, purporting to be made at Winchester in the twenty-fifth year of Edward the father etc., which was not [so] made, and was attained before the king.

BEREFORD C.J. to *Scrope*. Say something else.

Scrope. Again, we ask judgment of this writ, for it saith that we conspired to make this statute purporting to be to the profit of Richard, who is not named in this writ. Judgment etc.

Herle. We have said that by your conspiracy and your false allegations we are endamaged in a thousand pounds etc. Answer that.

Scrope. You said that this conspiracy was made against you and Richard, and you do not assign any damage to Richard, but only to yourself. Judgment etc.

Herle. We say that you procured the making of a statute purporting to be made to Richard which was not in fact made, whereby we received damage.

Scrope. You ought not to be answered on this writ, for at the beginning it maketh us conspirators and at the close maketh us procurors. Judgment of the variance etc.

BEREFORD C.J. These seven years I have not been put to study a writ so much as this one by reason of your objections, which are worth naught.

Herle. Our action is based upon three matters. The first is that you conspired amongst you to make a statute purporting to be made at Winchester, which was not made at Winchester. The second is that you caused us to be put to trouble and expense. The third is that you have procured an action to be brought against us, and by the judgment of the Court in that action we were ejected from our manors.

Scrope. A judgment cannot be procured etc.: it must be by action of law.

BEREFORD C.J. Though you did not procure the judgment, you prosecuted the suit upon which judgment was given; and it is of your false contrivances that he complaineth.

Herle. By your false allegations etc., and upon that you procured a suit to be brought here in this Court, in which judgment was given; which judgment was reversed by reason that the Court found that it had been deceived by your false conspiracy.

Scrope. In that case, then, you can have a writ of deceit. Judgment of this writ.

Herle. Deceit was found and attained; but his complaint now is

autres purpensates cele malice¹ pur la quele il fust greue et de ceo se pleint il etc.

Berr. Si vous seez de moun conseil ioe pri vostre conseil de mestre vne busoigne en oewre tut seit la chose mauoise en sey si vous ne sachez le mal pur vostre conseil ne porterez nul penaunce ausi die ioe de ceste part pur ceo qe vous sauiez² le mal et vous procurastes de mettre en oeuere de ceo se pleint il.

Pass. Si vous veez qe cestui bref seit funde suz ley nous dirroms ³autre chose.⁴

Berr. Cestui bref nest pas funde suz ley einz ⁵est purueu⁶ de punir fausetes et mauaites ⁷le quel chescon de uous dust voler.⁸

⁹*Berr.* En le tens le Roy Edward qe mort est il auoit vn bref issue hors de la Chancerie au viconte de Northumberlond a summoundre Isabel la Contesse de Aumar qele fut au proschein parlement a respoundre au Roy et le bref voleit *supra sibi obiiendis* etc. la dame vint au parlement et le Roy mesme sasit au parlement E pus par vne Iustice ele fut arene de ben a .xxx. articles la dame par seriant demanda iugement du bref de sicom le bref ne fut de nul certain article et ele fut arene de diuerse articles iugement etc. et il y aueint deux Iusticez qe voleient agarder le bref bon. E dont dit *Sire Rauf de Hengham* ¹⁰al vn dez Iusticez¹¹ volez vous faire cel agard icy com vous feistes a C. ala deliuerance de la Gaole le recettur fut pendu et puis le principal fust acquite deuant vous mesme. *E autre* issi dit il al autre Iustice deuant vous a N. si feistes pendre vn homme vtlage pur acounte les queux agars ne furent mie acordant a ley de terre.

Berr. Edward le Roy apres ceo de sa grant grace graunta sun heritage a son heir.

Berr. E puis *Hengham* dit ley veut qe nul ne seit surpris en la court le Roy mes par vous la dame respoundreit en court dautre chose quele ne fut garny par bref E pur ceo ele serra garny par bref des articles de quel ele serra arene et ceo est ley de terre.

Berr. E dont leua le Roy qe fut mout sagis et dit Ioe nay qe faire de vos desputesons mes par le sank dieu vous moy durrez bon bref enk vous leuez de illoqe auxi di ioe par de cea vous chalangez le bref pur

¹ mauoyte, *G.* ² suistes, *G.* ³⁻⁴ asset, *G.* ⁵⁻⁶ *G* omits. ⁷⁻⁸ *G* omits.
⁹ to ² on p. 45 *G* omits. ¹⁰⁻¹¹ These words are interlineated.

that he suffered damage through the wickedness plotted by you and the others.

BEREFORD C.J. If you be of my counsel and I ask your advice as to the performance of some piece of business, then, though the thing be evil in itself, yet, if you do not know that it is evil, you will not be punished for the advice you gave me; so here I say that his ground of complaint against you is that you were well aware of the wickedness and yet procured its performance.

Passeley. If you think that this writ is founded on law, we will say something else.

BEREFORD C.J. This writ is not founded upon law,¹ but has been provided [by statute] for the punishment of falsities and wickednesses, which each one of us should eschew.

BEREFORD C.J. In the time of King Edward that is dead a writ issued out of the Chancery to the Sheriff of Northumberland to summon Isabel Countess of Aumale to appear at the next Parliament to answer the King, and the writ ran *supra sibi obiiciendis* etc. The lady came to the Parliament, and the King himself sat in the Parliament. And afterwards by a Justice she was arraigned on good thirty articles. The lady, by her serjeant, asked judgment on the writ, since it made no one definite charge, but charged her on divers articles; judgment etc. And there were two Justices who wanted to rule the writ a good one. And then Sir Ralph of Hengham said to one of the Justices "Would you give judgment here after the manner that you did at the deliverance of the gaol at C., when the receiver was hanged and the principal was afterwards acquitted before yourself?" And then he said to the other Justice "When you were sitting at N. you caused one who had been outlawed on a matter of accounts to be hanged." Those judgments were not in accord with the common law.

BEREFORD C.J. Edward the King afterwards of his grace granted her heir his heritage.²

BEREFORD C.J. And afterwards Sir Ralph Hengham said that the law willeth not that any should be taken by surprise in the King's Court, 'but you would have the lady called upon to answer in Court of other matters than those she had notice of in the writ. She must have notice in the writ of the articles on which she will be arraigned, and that is the law of the land.'

BEREFORD C.J. And then the King that was passing wise rose and said "Naught wot I of your quibbling, but by God's Blood ye shall give me a good writ before ye get you up from hence." So here

¹ i.e. upon the common law.

² See *Rotuli Parliamenti*, i. 130 b.

ceste parole procurauerunt et ceo est vn point de sa accion par qi il bie¹ de Requere damages vers vous et si cele parole ne fut il moy semble qe son bref ne serreit garraunt a son Counte etc. par qi ditez autre chose etc.²

Scrop. Nous enparleroms.³

Berr. Alez si enparlez taunqe ⁴a demein.⁵

Lendemein William de Goldigtone se profrit vers Ion de Basigburne.

Berr. Demandez Ion de Basigburne.

Fut demande et ne vint nient.

Herl. Vous veez bien comment Ion de Basigburne issit denparler et ceo est departy en despit de la court par qi nous priom iugement de lui com de noun defendu ⁶et priom nos damages etc.⁷

Berr. Nous veom bien vostre chalenge et tendez vos iugements a demain et endementers nous parleroms de ceste matere a nos compaignouns.

Lendemein *Rogger Brabazon* et ces compaignons ⁸vindrent en commoun Baunk et *Herl.* pria pur William de Goldigtone soun record et soun iugement.

Scrop. Qel iugement volez vous auer ?

Herl. Nous demandoms etc.

Scrop. Tut fu ceo en plai de terre vous naueriez qe le petit cape ergo vous nauerez icy qe le grant destresce et hoc confirmauit *Pass.*

Hl. Vostre respounse tendereit lu sil ne vst prie conge denparler et puis departir en despit de la court.

Brabazon. Dixit in consilio si ceo fut en plai de terre il recoureit seisine de terre pur le despit maintenant saunz le petit cape et mout plus fort en play de trespas.

Rideuale clericus dixit quod hec fuit approbacione omnium Iusticiariorum de reddendo Iudicium super principale pro non defenso suo etc.

Et postea concordati sunt pro ducentis libris etc.⁹

¹ 'lie' has been written after 'bie,' but is marked for erasure. ² from ³ on p. 44 *G* omits. ⁴ *G* adds tant a demayn. ⁵⁻⁷ *G* omits. ⁶⁻⁷ *G* omits. ⁸⁻⁹ etc. *G.* ⁹ The scribe originally added here maintenant saunz le petit cape etc. and then marked these words for erasure.

I say that you are challenging this writ just on this one word *procurauerunt*; but that is a point in his action on which he relies for seeking damages against you, and if that word were not there I am of opinion that his counting would not be warranted by his writ etc. Wherefore say something else etc.

Scrope. We will imparl.

BEREFORD C.J. Go and imparl till to-morrow.

On the morrow William of Goldington proffered himself against John of Bassingbourne.

BEREFORD C.J. Call John of Bassingbourne.

He was called, but he did not come.

Herle. You see how John of Bassingbourne went out to imparl and hath gone away in contempt of the Court. Wherefore we ask judgment of him as putting in no defence, and we pray damages etc.

BEREFORD C.J. We take note of your challenge; and postpone your judgments till to-morrow; and in the meanwhile we will speak of this matter with our companions.

On the morrow SIR ROGER BRABAZON C.J. (K.B.) and his companions came into Common Bench; and *Herle*, on behalf of William Goldington, prayed his record¹ and his judgment.

Scrope. What judgment do you want?

Herle. We ask etc.

Scrope. Though this were in a plea of land you would get naught but the petty *cape*; and so here you will have naught but the grand distress; and *Passeley* agreed.

Herle. What you say might be to the point if he had not prayed leave to imparl and had not afterwards gone away in contempt of the Court.

BRABAZON C.J. (K.B.) said in consultation that if this were a plea of land the plaintiff would straightway recover seisin of the land by reason of the contempt, without the petty *cape*; and with stronger reason in a plea of trespass.

Ridevale, clerk, said that it was the intention of all the Justices to give judgment on the defendants' failure to defend.

And afterwards the parties came to a settlement for two hundred pounds etc. [to be paid at once, without the petty *cape* etc.]²

¹ *i.e.* record of the default made by John. ² See note 9 on opposite page.

II.¹

Conspiracie.

William de Goldingtone porta bref de conspiracie vers Iohan de Bassingborne et autres .iiij.² et estima ses damages³ a .Milli. Iohan et les autres excepciounerent primement a la Counte et puis al bref et furent chace de Court a respoudre outre il prierent conge denparler et auoit iour taunqe lendemein a quel iour Iohan et les autres solempnement demandez ne vindrent point.

Herle pria qe la defaute feut Recorde et puis demanda iugement de euz com noun defendu et pur ceo qe euz departirent en despit de la Court.

Et ⁴au drein ⁵accorderent oue⁶ William et ly donerent .C.C.li. pur sey retrere etc. ou autrement les Iustices eussent rendu iugement sur le principal videlicet⁷ quod pro non defenso. Et sire Roger Brabazoun dit qe si ceo feut en plee de terre ⁸qe seisine de terre⁹ serroit agarde.

Notes from the Record.

I.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 121, Essex.

Iohannes de Bassingbourne attachiatus fuit ad respondendum Willelmo de Goldingtone de placito *quare ipse simul cum Ada de Aungre Fremundo de Asherugge Nicholao de Etone Willelmo le Botiller et Iohanne fratre eius conspiracione inter eos apud Chelmerford prehabita Maneria de Terlinge et parua Badewe prefato Iohanni de Bassingbourne de dono Ricardi le Gras fraudulenter adquirere machinantes Radulphum le Gras recognicionem Mille et trescentarum librarum prefato Ricardo anno regni domini Edwardi Regis patris Regis nunc vicesimo quinto apud Wyntone coram Adam [*sic*] de Norhamton et Iohanne de Aune ad recognicionem debitorum iuxta formam statuti pro mercatoribus editi tunc ibidem accipiendam deputatis fecisse vt sic maneria illa in manu ipsius Radulphi existencia in debito predicto fuissent obligata falso confinxerunt et diu postmodum virtute recognicionis illius ac si rite facta fuisset cum non esset breue Regis coram Iusticiariis suis apud Westmonasterium in Crastino Purificacionis beate Marie anno regni Regis nunc secundo retornatum de corpore ipsius Radulphi dudum defuncti capiendo et in prisona Regis detinendo quousque prefato Ricardo de debito predicto foret plenarie satisfactum vicecomiti Regis nunc predicto

¹ Text of (II) from *M*, collated with *P* and *T*.
encountre.

⁴⁻⁶ furent a drein acordez, *T*.

² .iiij., *T*.

³ *T* adds

⁵⁻⁶ accederent a, *P*.

⁷ scilicet, *T*.

⁸⁻⁹ Supplied from *P* and *T*.

* See note on p. 48 below.

II.

Conspiracy.

William of Goldington brought a writ of conspiracy against John of Bassingbourne and four others and reckoned his damages at a thousand pounds. John and the others first challenged the counting and then the writ, but the Court made them answer over. They prayed leave to imparl, and were adjourned till the morrow ; on which day John and the others, being formally called, did not come.

Herle prayed that the default be recorded, and then asked judgment of them as making no defence, by reason of their going away in contempt of the Court.

And at last they came to terms with William and gave him two hundred pounds to withdraw etc., or otherwise the Justices would have given judgment on the special issue of failure to defend. And SIR ROGER BRABAZON C.J. (K.B.) said that if this had been in a plea of land seisin of the land would have been awarded.

Notes from the Record.

I.

De Banco Rolls, Hil., 5 Edw. (II. No. 190,) r. 121, Essex.

John of Bassingbourne was attached to answer William of Goldington of a plea * why he and Adam of Aungre, Fremund of Asherugge, Nicholas of Eton, William the Butler and John his brother, after conspiring together at Chelmsford with the design that the aforesaid John of Bassingbourne should fraudulently acquire by gift from Richard the Gras the Manors of Terling and Little Baddow, did falsely pretend that Ralph the Gras had at Winchester in the twenty-fifth year of the reign of the lord King Edward, father of the King that now is, before Adam of Northampton and John of Aune, commissioners appointed to receive at that time and place recognitions of debts in accordance with the provisions of the statute provided for merchants, recognised that he was indebted to the aforesaid Richard in one thousand and three hundred pounds, in such form as to make the aforesaid manors, then being in the possession of that same Ralph, chargeable with the aforesaid debt ; and some time afterwards, by virtue of that recognition, and as though it had been regularly made when in fact it had not been so made, did purchase, from the King, in the name of the said Richard, but without any knowledge thereof on his part, a writ to the sheriff of the King that now is, returned before his Justices at Westminster on the Morrow of the Purification of Blessed Mary in the second year of the reign of the King that now is, to take the body of the said Ralph, that was dead some time afore, and to detain him in the King's prison until that the aforesaid Richard should be fully satisfied of the aforesaid debt, and did maliciously procure

* See note on p. 48 below.

Notes from the Record—continued.

nomine ipsius Ricardi id penitus ignoranter impetrarunt et maneria predicta in manibus ipsius Willelmi de Goldington tunc existentis [*sic*] predicto Ricardo per formam statuti predicti quousque predictum debitum inde leuasset tenenda per considerationem Curie Regis adiudicari et prefato Willelmo de Goldington quousque processus predictus tanquam erroneus et supra errore fundatus ad sectam ipsius Willelmi de Goldington in eadem Curia Regis coram prefatis Iusticiariis annullatus fuit detineri ipsumque Willelmum ea occasione laboribus et expensis multipliciter fatigari maliciose procurarunt et alia enormia ei intulerunt ad dampnum ipsius Willelmi de Goldington mille marcarum et contra formam ordinacionis de communi consilio regni Regis in huiusmodi facte etc.* Et vnde idem Willelmus de Goldington queritur quod predictus Iohannes de Bassingbourne simul etc. conspiracione inter eos habita die Iouis proxima ante festum sancti Martini anno regni Regis nunc secundo apud Chelmerford fecit ei predictas transgressiones et maliciam contra formam ordinacionis etc. in forma predicta vnde dicit quod deterioratus est et dampnum habet ad valenciam Mille marcarum Et inde producit sectam etc.

Et Iohannes venit Et defendit vim et iniuriam quando etc. et idem Iohannes plures excepciones proposuit contra formam brevis etc. quarum vna talis erat videlicet quod non debet eidem Willelmo ad hoc breue respondere eo quod in principio brevis supponit idem Willelmus ipsum Iohannem simul etc. falso confinxisse predictum statutum etc. et impetrasse predictum breue de statuto etc. et sic supponit ipsum Iohannem esse factorem predictae transgressionis etc. et in fine istius brevis dicit ipsumque Willelmum ea occasione laboribus et expensis multipliciter fatigari maliciose procurare etc. et pro hoc supponit idem Willelmus ipsum Iohannem maliciam illam versus aliquem alium procurasse etc. vnde petit iudicium de forma brevis etc. Et dictum est ei per Iusticiarios quod respondeat pro se quod sibi viderit expedire etc. Et super hoc idem Iohannes petita licencia inde loquendi et optenta etc. Postea idem Iohannes solempniter vocatus non venit Immo recessit in Contemptum Curie etc. vnde predictus Willelmus precise petit iudicium de ipso Iohanne tanquam indefenso etc. Et super hoc dies datus est eidem Willelmo de audiendo iudicio suo hic in Octabis sancte Trinitatis etc. Postea ad diem illum venit predictus Willelmus Et datus est ei dies de audiendo iudicio suo vsque in Crastino Animarum eo quod iudicium nondum etc. Postea ad diem illum venit predictus Willelmus Et datus est ei dies de audiendo iudicio suo vsque a die Pasche in xv. dies eo quod iudicium nondum etc. Postea ad diem illum predictus Willelmus venit Et datus est ei dies hic de audiendo iudicio suo vsque in Octabis sancti Michaelis eo quod iudicium nondum etc.

* See note on p. 48 below.

Notes from the Record—continued.

a judgment by consideration of the King's Court that the aforesaid manors then in the possession of the said William of Goldington should be holden by the aforesaid Ralph under the provisions of the aforesaid statute until that the aforesaid debt should be levied on them, and caused them to be detained from the aforesaid William of Goldington until that the aforesaid process had been annulled before the aforesaid Justices in the same Court of the King, upon the suit of the same William of Goldington, as erroneous and founded on error; and did cause the same William to be oftentimes harassed in this matter with trouble and expense; and other injuries did to him to the damage of the said William of Goldington of one thousand marks; against the form of the ordinance of the Common Council of the King's realm in such case made etc.* And of this the same William of Goldington doth complain that the aforesaid John of Bassingbourne together with etc. by conspiracy had amongst them at Chelmsford on the Thursday next before the Feast of St. Martin in the second year of the King that now is, did to him the aforesaid trespasses and wickedness against the form of the ordinance etc. in the manner aforesaid, whereby he saith that he hath suffered loss and hath damage to the amount of a thousand marks, and thereof he produceth suit etc.

And John cometh and doth deny force and injury when etc.; and the same John did take divers exceptions against the form of the writ etc. and of these was one as followeth, to wit, that he ought not to answer this same William on this writ because at the beginning of the writ this same William doth suppose that this John, together with etc., did falsely pretend the aforesaid statute etc., and did purchase the aforesaid statutory writ etc. and so supposeth that this same John was the doer of the aforesaid trespass etc., while at the end of the same writ he saith 'and did maliciously cause the same William to be oftentimes harassed in this matter with trouble and expense,' and so this same William supposeth that this John procured the doing of this wickedness against someone else etc.; wherefore he asketh judgment of the form of the writ etc. And he is bidden by the Justices to make such answer for himself as shall seem to him to be to his advantage etc. And thereupon the same John, having sought and obtained leave to imparl etc. Afterwards the same John, being formally called, did not come, but went away in contempt of the Court etc. Wherefore the aforesaid William asketh judgment of John on this specific point, as putting in no defence etc. And thereupon a day is given to this same William to hear his judgment here on the octaves of the Holy Trinity etc. Afterwards, on that day, the aforesaid William came, and a day is given him to hear his judgment on the Morrow of All Souls, because the judgment is not yet etc. And afterwards, upon that day, the aforesaid William came, and a day is given him to hear his judgment fifteen days after Easter, because the judgment is not yet etc. Afterwards upon that day the aforesaid William came, and a day is given him here to hear his judgment on the octaves of St. Michael, because the judgment is not yet etc.

* See note on p. 48 below.

II.

De Banco Rolls, Easter, 5 Edw. II. (No. 192), r. 190, Essex.

Willelmus de Goldingtone optulit se .iiij. die versus Adam de Aungre Nicholaum de Etone Willelmum le Botiller et Iohannem fratrem eius de placito.¹ . . .

. . . ²Et ipsi non veniunt et preceptum fuit vicecomiti sicut pluries quod distringeret predictum Adam per omnes terras etc. Et quod de exitibus etc. Et similiter sicut pluries quod caperet predictos Nicholaum Willelmum et Iohannem si etc. Et vicecomes modo mandat quod predictus Adam districtus est per catalla ad valenciam viginti denariorum. Et Ricardus de Absishey Ricardus Frunt Iohannes de Hitch et Iohannes le Stubbere manuceperunt eum Ideo ipsi in misericordia Et sicut pluries preceptum est vicecomiti quod distringat eum per omnes terras etc. Et quod de exitibus etc. Et quod habeat corpus eius hic in octabis Sancti Iohannis Baptiste etc. Et quia testatum est hic quod vicecomes comitatus predicti respondisse potuit de maioribus exitibus de terris et catallis predictae Ade a tempore quo etc. preceptum est Coronatoribus Comitatus predicti quod inquirent de quibus et quantis exitibus etc. Et quod inde etc. constare faciant Iusticiariis hic ad prefatum terminum etc. Et de predictis Nicholao Willelmo et Iohanne vicecomes mandat quod non sunt inuenti nec aliquid habent etc. Ideo sicut pluries preceptum est vicecomiti quod capiat eos si etc. Et saluo etc. Ita quod habeant [*sic*] corpora eorum hic ad prefatum terminum etc. Et vnde vicecomes etc.

III.

De Banco Rolls, Trin., 5 Edw. II. (No. 193), r. 215, Essex.

Willelmus de Goldingtone per Ricardum de Snyterle attornatum suum optulit se .iiij. die versus Nicholaum de Etone Willelmum le Butiller et Iohannem fratrem eius de placito.¹ . . .

. . . ²Et ipsi non veniunt et preceptum fuit vicecomiti sicut pluries quod caperet eos si etc. Et vicecomes nichil inde fecit set mandauit quod non sunt inuenti nec aliquid habent etc. Ideo sicut pluries preceptum est vicecomiti sicut pluries quod capiat eos si etc. Et saluo etc. Ita quod habeat corpora eorum hic a die sancti Michaelis in .xv. dies per W. de Bereford. Et vicecomes sic etc.

IV.

De Banco Rolls, Mich., 6 Edw. II. (No. 195a), r. 351, Essex.

Dies datus est Willelmo de Goldingtone querenti per Ricardum de Snyterle attornatum suum et Ade de Aungre per Thomam le Moyne attornatum suum de placito transgressionis et conspiracionis a die Pasche in quinque septimanas prece parcium sine essonio etc.

¹⁻² Between these points the record runs exactly as between the asterisks in Note I.

II.

De Banco Rolls, Easter, 5 Edw. II. (No. 192), r. 190, Essex.

William of Goldington presented himself on the fourth day against Adam of Aungre, Nicholas of Eton, William the Butler and John his brother of a plea ¹

² And they do not come. And the Sheriff had been charged *sicut pluries* that he should distrain the aforesaid Adam by all his lands etc. And that of the issues etc. And likewise *sicut pluries* that he should take the aforesaid Nicholas, William and John if etc. And the Sheriff doth now send word that the aforesaid Adam was distrained by his chattels to the value of twenty pence. And Richard of Absishey, Richard Frunt, John of Hitch and John the Stubber were his manucaptors. So these are in mercy. And *sicut pluries* the Sheriff is charged to distrain him by all his lands etc. And that of the issues etc. And to have his body here on the octaves of St. John the Baptist etc. And seeing that it is testified here that the Sheriff of the aforesaid county might have returned larger issues from the lands and chattels of the aforesaid Adam from the time when etc. the coroners of the aforesaid county are charged to inquire what and how large issues etc. And that thereof etc. they are to certify the Justices here at the aforesaid term etc. And touching the aforesaid Nicholas, William and John the Sheriff sendeth word that they are not to be found, nor have they aught etc. So *sicut pluries* the Sheriff is charged to take them if etc. and saving etc. so that he have their bodies here at the aforesaid term etc. And whereof the sheriff etc.

III.

De Banco Rolls, Trin., 5 Edw. II. (No. 193), r. 215, Essex.

William of Goldington by Richard of Snitterley, his attorney, presented himself on the fourth day against Nicholas of Eton, William the Butler and John his brother on a plea.¹

² And they do not come. And the sheriff had been charged *sicut pluries* that he should take them if etc. And the Sheriff did naught thereof but sent word that they are not to be found nor have aught etc. So *sicut pluries* the Sheriff is charged *sicut pluries* that he take them if etc. and saving etc. so that he have their bodies here in the quindenes of St. Michael. *Per W.* of Bereford. And the Sheriff is to be etc.

IV.

De Banco Rolls, Mich., 6 Edw. II. (No. 195a), r. 351, Essex.

A day is given to William of Goldington, complainant, by Richard of Snitterley, his attorney, and to Adam of Aungre by Thomas the Moyne his attorney, of a plea of trespass and conspiracy by the prayer of the parties five weeks after Easter, without essoins etc.

^{1,2} Between these points the record runs exactly as in Note I. between the asterisks.

11. AMUNDEUILLE v. CONTESSE DE CORNEWAILLE,
NEUILL, CHENY ET VIRLAY.¹

I.²

Engettement de garde ou vn homme dona certain tenementz par fin en fee taille a tenir de li meimes par les seruices dune rose par an et rendre al chef seignur pur li les seruices dues etc.

William Maundeville porta son bref vers Margerie Custauns [*sic*] de Cornewaille et counta coment la garde a li appent de quele garde il fust seisi tant qe Margerie et les autres li engetterunt.

Toud. Robert pere lenfant tient de Edmund Iadis counte de Cornewaille par homage fealte et \vn fee de chialer ensi qapres la mort et pur ceo qil tient du Roy en chief le honur de E. a qi ceux seruices sount regardaunz devint en le mein le Roy issint ke le honur de E. et cel fee fust assignee a la contesse a tenir en noun de dowere par quel assignement Robert launcestre lenfant et [*sic*] attourna de sa fealte et ensi appen ali la garde apres la mort soun tenant.

Hle. Dount ne engestastes nous pas nous voloms auerer lengettement.

Toud. A ceo nauoms mestre a respoudre de pus qe nous affermons dreit en nostre persone.

Hle. Ceo est vn bref de trespas par quei il vous couient respoudre alengettement.

Toud. Cest vn bref de dreit entre ceux qe claimont la garde.

Hle. Si vous volez conustre lengettement et pus mustrer coment la garde a vous apent ceo est vne veie a pleder.

Ber. Sil est dreit en la garde mes qe vous fusset seisi vn demi an ou plus qe nul dreit nauet nestut ia.

Toud. Nous vous dioms cum auant qe la garde a nous apent racione predicta et nous apres la mort nostre tenant freschement entrames en la garde et li ostames cum bien nous lust.

Ingg. Nous vous dioms qe certain an etc. se leua vne fin de mesme le maner entre Ion de C. et N. nostre mere cum del dreit N. nostre

¹ Reported by *B, L, M, P, R, Q, X, Z.* Names of the parties from the Record.

² Text of (I) from *R.*

11. AMUNDEVILLE *v.* THE COUNTESS OF CORNWALL,
NEVILL, CHENY AND VIRLAY.

I.

Ejectment from wardship. Tenements were granted in fee tail by a fine to be held of the grantor by the yearly service of a rose, the tenant rendering to the chief lord on his behalf the services due etc.

William Amundeville brought his writ against Margery, Countess of Cornwall,¹ and counted that the wardship belonged to him, and that he was seised of the wardship until that Margery and the others ousted him.

Toudeby. Robert, father of the infant, held of Edmund that was aforetime Earl of Cornwall by homage, fealty and the service of a knight's fee; so that upon the death of Edmund, because he held the honour of E.² from the King in chief, to which manor those services are regardant, this honour came into the King's hand, who assigned the honour and this fee to the Countess to hold in the name of dower. In virtue of this assignment Robert, the ancestor of the infant, attorned himself by fealty [to Margery]; and therefore the wardship belongeth to her after the death of her tenant.

Herle. That amounts to saying that you did not eject us. We will aver ejectment.

Toudeby. We need not answer that, as we affirm right in our person.

Herle. This is a writ of trespass, and so you must answer the plea of ejectment.

Toudeby. This is a writ of right between parties who are claiming the wardship.

Herle. Admit the ejectment if you like, and then show how the wardship belongeth to you. That is one way of pleading.

BEREFORD C.J. If the wardship be matter of right, then,³ even though you were seised of it for half a year or more, you would not by such possession have acquired any right in it.

Toudeby. We tell you, as before, that the wardship belongeth to us for the reasons aforesaid; and immediately after the death of our tenant we entered upon the wardship, and ejected William, as we were well entitled to do.

Ingham. We tell you that in a certain year etc. a fine was raised in respect of this same manor between John of C. and N. our mother, as

¹ Daughter of Richard de Clare, Earl of Gloucester and Hertford, and wife of Edmund, Earl of Cornwall, fifth son of Richard (King of the Romans)

who was the second son of King John. He died in 1300.

² i.e. the honour of Eye. See *Inquis. post mortem*, Edw. II., No. 26, p. 302.

mere et Robert piere lenfant sur bref de garrantie de chartre cest asauer qe C. et N. conusserunt les tenementz etc. Robert cum ceo qil auait de lour doun a auer etc. a li et a ces heirs de son cors engendres rendant ali etc. et fesaunt pur li al chef seignurage de fee etc. et nous seisi de lenfant¹ si la etc. iugement si en coudre la fin qe est de recorder pusset dire qil tient de vous.

Toud. Nous ne sumes pas partie ala fin et nous voloms auer qil tient de nous et nous seisi de la fealte.

Hle. De pus qe vous² allegget chose qest de record qe proue qil fust nostre tenant iugement si a nul auerement en coudre la fin qest de recorder deuet auenir *Estre ceo* vous dioms qe la reuercion de meime ceux tenemenz sulum la purporte de la fin est a nous.

Westcot. Il puet estre qil fust feffe par vne chartre en fee simple a tenir de chef seignurage du fee et qe pus ceste fin se leua entreux et ceo ne deit cheier en preiudice du chief seignur et de pus qe nous auoms dist qil tient de counte et coment ceo fee nous fust assigne et nous seisi de la fealte et issint morust nostre tenant et la court asserte de nostre estat et nous ne sumes pas partie a ceste fin et tendoms lauerement le quel il refusent iugement.

Berr. Si vous purrez estre partie a la fin nous serroms tost espleite.

Hle. Si vous voet qe la verement seit receuable en coudre la fin nous receueroms volenters.

Berr. Nous auiseroms.

Et quia attornatus dubitauit se de dilacione Iudicii dissessit [*sic*] in patria.

II.³

Engettement de garde ou le pleintif mist auant fyn qe proua qe le piere enfant tint de lui et non obstante la fyn fust resceu dauerrer qil tint de ly et noun pas de ly.

Iohan de Huntingfeld porta son bref dengettement de gard vers margerie qe fut la femme Edmond le Count de Cornwaile etc. et dit com la garde de la terre a luy apent etc. de laquele garde il fut seisi tanqe margerie atort⁴ et les autres⁵ luy engetta etc.

Toud. Nous vous dioms qe ceux tenementz furunt en la seisine vn Roger etc. qe ceux tenementz tynt de Edmond Count de Cornewaile etc. iadis nostre baroun par homage fealte et escuage etc. issint qe apres

¹ Sic, but obviously a mistake for fealte.

² Sic in text, but the sense clearly requires nous. The following word is in compendio.

³ Text of (II) from P, collated with B, L and Q. Headnote from B. The note in L is: Engettement de garde ou la garde des terres leir celi qe fut enfeffe a tenir de vn homme par fealte fesaunt les seruices pur lui a chef seynur de fee fut porte demande par celi de qi il deuereit fere les seruices.

⁴⁻⁵ Added from B, Q.

being of the right of N. our mother, and Robert, father of the infant, under a writ of warranty of charter ; by which fine C. and N. recognised that the tenements were the right of Robert which he had by their gift, to have etc. to him and his heirs of his body begotten, paying to them etc., and rendering on their behalf to the chief lord of the fee etc. ; and we are seised of the fealty etc. Judgment whether, against the fine that is of record, you can say that he holdeth of you.

Toudeby. We are no party to the fine, and we will aver that Robert held of us and that we were seised of the fealty.

Herle. Since we¹ cite what is of record, which proveth that he was our tenant, judgment whether you ought to get to any averment against the fine which is of record. Further, we tell you that, according to the tenour of the fine, the reversion of these tenements is to us.

Westcote. It may be that Robert was enfeoffed in fee simple by a charter to hold of the chief lords of the fee, and that afterwards this fine was levied between the parties to it ; and that fact ought not to tend to the prejudice of the chief lord. Since, then, we have said that Robert held of the Earl, and have shown how this fee was assigned to us and that we were seised of the fealty, and that in such circumstances our tenant died ; and the Court is certified of our estate and we were not a party to this fine, and we offer the averment which they refuse. Judgment.

BEREFORD C.J. If you could be made a party to the fine, we should soon come to an end of the matter.

Herle. If you be of opinion that the averment is receivable against the fine, we will willingly receive it.

BEREFORD C.J. We will advise ourselves.

And because the attorney doubted that judgment would be tardy he went away.

II.

Ejectment from wardship where the plaintiff proffered a fine witnessing that the father of the infant held of him, and, the fine notwithstanding, the defendant was received to aver that the father held of her and not of the plaintiff.

John of Huntingfield brought his writ of ejectment of ward against Margery that was wife of Edmund the Earl of Cornwall etc., and said how the wardship belonged to him etc. ; of which wardship he was seised until Margery and the others wrongfully ousted him etc.

Toudeby. We tell you that these tenements were in the seisin of one Roger etc. who held these tenements of Edmund, Earl of Cornwall etc. that was aforetime our husband, by homage, fealty and escuage

¹ See the text, and note 2 on the opposite page.

la mort Edmond le Roy seisi la garde etc. et assigna le maner de Ledess etc. a margerie en noun de dowere ensemblement oue les seruices Roger par quel assignement Roger se attorna de sa feaute etc. et morust seisi nostre tenant par qi nous happames la garde de la terre et del heir Roger com bien nous lust etc. iugement si accioun ¹vers nous² par cesti bref³ etc.

Herle. Donqe vous conussez lengettement.

Toud. Nous le conussons en la manere com nous auoms dit.

Berr. Si ceo seit verite qe il ad dit il purra conustre saluement ⁴tut furent il .xx. engettemenz.⁵

Toud. Si il le voet dedire prest etc.

Herle. A dire qil tynt de luy ne deit ele auenir qar nous vous dioms qe ceux tenemenz furent en ascun temps en la seisine vn Wauter et Nichole sa femme nostré mere qe donerunt ceux tenemenz al auaunt dit Roger etc. par qi mesme cesti Roger porta son bref de garrauntie de Chartre vers Walter et Nichole deuant Sire Rauf de Hyngham lan .xx. le Roi Edward qe mort est ou Walter et Nichole conustrent les tenemenz estre le droit Roger com ceux qil auoit de lour doun a auer et tenir a luy et a ces heirs de son corps issauntz⁶ etc. de Wauter et Nichole et de les heirs Nichole par vne Rose par an pur touz seruices en fesaunt pur Wauter et Nichole et pur les heirs Nichole a chief seignurage du fee les seruices dues etc. iugement depus Roger fut le tenant Nichole qe fut nostre mere et par vertu de la fyn Nichole nostre miere et ces heirs sont meen⁷ entre⁸ vous et luy etc. issint qe vous ne purrez rien clamer en les seruices Roger ⁹mes ¹⁰auxi com de vn¹¹ bailiff fesaunt les seruices pur nos¹² et vous auez conu lengettement iugement et prioms nos damages.

Toud. Qil tient de nous auxicom nous supposons¹³ et nent de vous prest etc.

Herle. A cel auerement nauendrez¹⁴ mye qar nous mostroms fyn encontre qele ¹⁵vous nauendrez¹⁶ mye au pais.

¹⁷*Willoughby.* Nous ne sumes mye partie a cel recorde¹⁸ etc. quia res inter alios acta¹⁹ etc. Et daltrepart poet estre qe les tenemenz furent donez en fee simple primes a tenir de chief seignurage etc. par quel doun il se attorna et ²⁰coment qe par²¹ la fyn leue sur garrauntie de Chartre son estat fust taile etc. la fyn²² ne chaunge mye le primer estat etc. iugement depus qe nous sumes prest dauerer etc.

¹⁻² Added from *B*, *Q*.

²⁻³ *B* omits.

⁴⁻⁵ furent ix. aunzgetetz, *Q*.

In *B* there is a complete erasure here of about the same number of words.

⁶ engendretz, *B*, *Q*.

⁷ menz, *L*.

⁸ *Q* adds eux.

⁹⁻¹² Marked for erasure

in *B*.

¹⁰⁻¹¹ come nostre, *L*.

¹³ auoms dit, *B*, *Q*.

¹⁴ ne devez auenir, *B*.

¹⁵⁻¹⁶ recorde il nauendra, *B*, *Q*.

¹⁷⁻¹⁹ *L* omits.

¹⁸ iugement, *Q*.

²⁰⁻²³ qe

apres la fyn fust leue sur garrant la quel, *B*, *Q*.

²¹ *L* omits.



etc., so that upon his death the King seised the wardship etc. and assigned the manor of Ledess etc. to Margery, in name of dower, together with the services owed by Roger. Upon this assignment Roger attorned himself for his fealty etc. and died seised as our tenant ; therefore we seized the wardship of the land and of the heir of Roger, as well we were entitled to do etc. Judgment whether action lie against us by this writ etc.

Herle. Then you admit the ejectment.

Toudeby. We admit it in the manner we have said.

BEREFORD C.J. An if he be telling truth, he may safely admit it, though there were a score ejectments.

Toudeby. Ready etc., if he will deny it.

Herle. She ought not to be received to say that Roger held of her, for we tell you that these tenements were at one time in the seisin of one Walter and Nicholas his wife, our mother, who gave these tenements to the aforesaid Roger etc. and thereof this same Roger brought his writ of warranty of charter against Walter and Nicholas before Sir Ralph of Hengham in the twentieth year of King Edward that is dead, when Walter and Nicholas admitted the tenements to be the right of Roger, as having them by their gift, to have and to hold to him and to his heirs issuing from his body etc. from Walter and Nicholas and the heirs of Nicholas, paying therefor a rose every year for all services, and rendering on behalf of Walter and Nicholas and the heirs of Nicholas to the chief lords of the fee the services due etc. Since Roger was the tenant of Nicholas that was our mother, and by virtue of the fine of Nicholas our mother, and since his heirs are mesne between you and her etc., so that you can claim naught in Roger's services, except as of a bailiff performing services on our behalf, and since you have admitted the ejectment, we ask judgment and pray our damages.

Toudeby. That he held of us, as we say, and not of you, ready etc.

Herle. To that averment you will not get, for we proffer a fine against which you will not get to the country.

Willoughby. We are no party to that record etc. for a deed bindeth only the parties to it.¹ And, further, it may be that the tenements were at first given in fee simple to hold of the chief lords etc., and that by virtue of this grant Roger attorned himself ; and, though the estate was limited etc. by the fine raised on the warranty of charter, yet the fine changeth not the primer estate etc. Judgment, since we are ready to aver etc.

¹ Res inter alios acta aliis non preiudicare debet.

WITHDRAWN

Herle. Nous demandons iugement de pus ¹qe la Court² poet estre accerte ³par record de la tenaunce⁴ si a nul auerement deit il auenir en ceo cas.

Berr. Ele est tenant en dower et voet auerer la seisine son baroun en la manere com ele ad conte et sa seisine demesne etc. et ele nest mye partie a cele fin qe vous alleggez etc.

Toud. Qil tynt de nous vt supra prest etc.

Herle. Qil ne tynt pas de vous eynz de nous vt supra prest etc.
⁵Et cele issue tendi soun coheir etc.⁶

⁷Et alii e contra.⁸

III.⁹

Engettement de garde.

Ion de Huntynghfeld porta bref de engettement de garde vers Margerie qe fut la femme Esmon Count de Cornwaille qe com la garde de tant de terre par la nounage S. fiz et heir Robert a li appent pur ceo qe le dit Robert cel terre tint de li par seruices etc.

Toudi. Robert fu seisi de ceus tenemenz et les tint de Esmon nostre baroun par seruices de chivalrie com regardant a son maner de T. apres la mort Esmon le Roi seisi pur ceo etc. ou ceo maner a qei les seruices Robert furent regardants fut assigne a nous en dower od les seruices Robert par quel assignement Robert se attorna et morust seisi en nostre felte par qei nous prismes la garde com bon etc.

Herl. A dire qe Robert tint de Esmon ne deuez auenir qar Robert porta bref de garrantie de chartre de ceus tenemenz vers Nichole nostre mere ou Nichole conust estre le dreit Robert com ceus qil out de son doun a tenir a Robert et as heirs de son cors issauntz de Nichole et de ses heirs par les seruices dune Rose pur toz seruices fesant pur li et ses heirs a chef seignur de fe les seruices duez issint tint Robert de nostre mere pus de nous et nous de vostre baroun et de vous com meen iugement si vous pussez dire qil tint de vous.

Toud. Il put estre qe Robert vst fe simple auant la fin. Estre ceo il tint de nous le ior qil morust prest.

Alii e contra et fu ressu non obstante la fin purceo quel fu estrange al fin quere si ele auera eide.

¹⁻² qil est, B, Q; de pus quel put estre, L.

⁵⁻⁶ Added from Q.

⁷⁻⁸ Added from L.

³⁻⁴ de la tenure, B, L, Q.

⁹ Text of (III) from X.

Herle. Since the Court can certify itself of the nature of the tenancy by record, we ask judgment whether in these circumstances she ought to get to any averment.

BEREFORD C.J. She is tenant in dower and she wants to aver the seisin of her husband after the manner of her counting, and her own seisin etc., and she is no party to that fine which you tender etc.

Toudeby. That he held of us, *as above*, ready etc.

Herle. That he did not hold of you but of us, *as above*, ready etc. And the same issue was tendered by her coheir etc.

And the other side joined issue.

III.

Ejectment from Wardship.

John of Huntingfield brought a writ of ejectment from wardship against Margery that was wife of Edmund, Earl of Cornwall, for the wardship of so much land as belongeth to him, John, during the nonage of S., son and heir of Robert, because the said Robert held that land of him by the services etc.

Toudeby. Robert was seised of those tenements and held them of Edmund our husband by escuage as regardant to his manor of T. Upon the death of Edmund, the King, because etc., seized [into his hand the manor of T.] and this manor, to which the services of Robert were regardant, was assigned to us in dower together with the services of Robert: in consequence of which assignment Robert attorned himself and died seised in our fealty; wherefore we seized the wardship as we were entitled etc.

Herle. You ought not to be received to say that Robert held of Edmund, for Robert brought a writ of warranty of charter in respect of these tenements against Nicholas, our mother, when Nicholas admitted that they were of the right of Robert, as having them by her gift, to hold to Robert and to the heirs of his body, of Nicholas and of her heirs, by the service of a rose in lieu of all services, rendering for her and her heirs to the chief lord of the fee the services due to him. Robert therefore held of our mother, and afterwards of us; and we, as mesne, held of your husband and of you. Judgment whether you can say that he held of you.

Toudeby. It may be that Robert had the fee simple before the fine was levied. Further than that, he held of us the day he died. Ready.

And the other side joined issue; and the defendant was received to aver, the fine notwithstanding, for she was no party to the fine. I doubt whether she will get aid.

IV.¹

Engetment.

En vn bref dengettement de garde le defendant dist qe les tene-
menz etc. furent en ascun temps en la seisine vn R. qe les tient de
baroun mesme cesti femme vers qi le bref est porte par homage etc.
des queux seruices son baroun fust seisi etc. issint issint [*sic*] qapres
la mort son baron le maner de L. a quel maner les seruices R. furent
agardaunz fust assign a ceste femme par vertue de quel assignement
ele [*sic*] sattorna a la femme et morust son tenant et issint happa
ele la garde etc.

Le pleintif dist qe ceus tenemenz furent en la seisine sa miere qe
de ceux enfeffa R. a tenir de lui par les seruices dun Rose etc. et fesaunt
pur lui les seruices etc. et puisse fyn se leua en mesme la maner sur
bref de garranti de chartre et demandoms iugement desicom sa miere
fust meen parentre la baroun la femme et R. et R. ne fust [*sic*]² les seruices
a lui com si noun com bailiff etc. si par tiele seisine etc. purra il estre dist
le tenant son baroun et la femme tendist dauerrer qe R. tient de son
baroun vt supra qar ele fust estrange a la fyn et fust tenant en dower
et voleit auerrer la seisin [son] baroun etc. et fust a ceo ressu ex con-
sideracione Curie.

Et sic nota mesqe vn tenant soit feffe auant statut a tenir par les
servuices dun Rose etc. fesaunt a chef seignurage etc. si les tenementz
soient tenutz de chief seignur par seruice de Chivalrie le feffour auera
garde et mariage et auxi si le feffe ne face les seruices al chief seignur par
qi le feffour seit destreynt le feffour purra destreindre le feffe et auowere
pur la reson qil tient etc. et nad pas fait etc.

Notes from the Record.

I.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 123d., Suffolk.

Margareta que fuit vxor Edmundi quondam Comitis Cornubie Willelmus
de Neuill et Alexander Cheny et Thomas de Virlay attachiati fuerunt ad
respondendum Ricardo de Amundeuill de placito quare cum custodia

¹ Text of (IV) from Z.

² fust is clearly a slip for fist.

IV.

Ejectment.

In a writ of ejectment from wardship the defendant said that the tenements etc. were at one time in the seisin of a certain R., who held them of the husband of this same woman against whom the writ is brought by homage etc. Of these services her husband was seised etc., so that upon the death of her husband the manor of L., to which manor the services of R. were regardant, was assigned to this woman [by way of dower], and in consequence of this assignment R. attorned himself to her and died her tenant ; and so she seized the wardship etc.

The plaintiff said that these tenements were in the seisin of his mother who enfeoffed R. of them to hold of her by the services of a rose etc., rendering on her behalf the services etc., and that afterwards a fine was levied in respect of the same manor under a writ of warranty of charter ; and we ask judgment whether, seeing that his mother was mesne between the husband of the woman [*i.e.* of the defendant] and R., and R. rendered the services to him merely as bailiff etc. by such seisin etc., R. can be said to be the tenant of her husband. And the wife offered to aver that R. held of her husband *as above*, for she was no party to the fine, and was tenant in dower and was ready to aver the seisin of her husband etc., and she was received to make such averment by ruling of the Court.

And so note that though a tenant be enfeoffed before the statute by the services of a rose etc., rendering to the chief lords etc., yet, if the tenements be holden of the chief lord by knight service, the feoffor shall have wardship and marriage ; and so, if the feoffee render not to the chief lord services for which the feoffor may be distrained, the feoffor may distrain the feoffee, and avow by reason that he held etc., and hath not rendered etc.

Notes from the Record.

I.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 126d., Suffolk.

Margery¹ that was wife of Edmund that was aforetime Earl of Cornwall, William of Nevill and Alexander Cheney and Thomas of Virley were attached to answer Richard of Amundevill of a plea why, seeing that the wardship

¹ She was daughter of Richard of Clare, Earl of Gloucester and Hertford. She was divorced *a mensa et toro* February

129 $\frac{3}{4}$ and condemned *vitam vivere celibem*. See the *Complete Peerage* (edit. Hon. Vicary Gibbs), iii. 433.

Notes from the Record—continued.

Manerii de Sternefeld cum pertinenciis vsque ad legitimam etatem Iohannis filii et heredis Roberti de Amundevill ad ipsum Ricardum pertineat eo quod predictus Robertus Manerium illud de eo tenuit per seruicium militare et idem Ricardus in plena et pacifica seisina eiusdem custodie diu extitit predicta Margareta et alii scilicet cum Adam [*sic*] Tascard [et] Willelmo de Tytieteshale predictum Ricardum custodia illa violenter eiecerunt et bona et catalla sua ad valenciam sexaginta librarum ibidem inuenta vi et armis ceperunt et asportauerunt et alia enormia ei intulerunt ad graue dampnum ipsius Ricardi et contra pacem etc. Et vnde idem Ricardus per Thomam de Bramptone attornatum suum queritur quod cum predictus Robertus pater predicti heredis tenuisset de eo predictum Manerium cum pertinenciis per homagium fidelitatem et seruicium feodi vnus militis etc. de quibus homagio fidelitate et seruicio idem Ricardus fuit seisisus per manus ipsius Roberti et idem Robertus in homagio suo obiit per quod custodia predicti Manerii vsque ad legitimam etatem predicti heredis ad ipsum Ricardum pertineat et idem Ricardus in plena et pacifica seisina eiusdem custodie diu extiterit;¹ predicti Margareta et alii simul etc. die Iouis proximo ante festum Sancti Petri aduincula anno regni domini Regis nunc quinto predictum Ricardum a custodia illa violenter etc. eiecerunt et bona et catalla sua videlicet ordeum auenas fabas et pisas et fena ad valenciam sexaginta librarum ibidem inuenta etc. vi et armis etc. ceperunt et asportauerunt et alia etc. et contra pacem etc. vnde dicit quod deterioratus est et dampnum habet ad valenciam Centum librarum Et inde producit sectam etc.

Et Margareta et alii per Adam de Brom attornatum suum veniunt Et defendit vim et iniuriam quando etc. et quo ad predicta catalla capta et asportata bene defendit quod ipsi non ceperunt nec asportauerunt catalla illa sicut predictus Ricardus queritur Et de hoc ponunt se super patriam et Ricardus similiter etc. Et quo ad hoc quod predictus Ricardus queritur se eiectum fuisse de predicta custodia etc. dicunt quod predictus Robertus pater predicti heredis tenuit predictum manerium de Edmundo quondam Comite Cornubie quondam viro ipsius Margarete per homagium fidelitatem et seruicium feodi vnus militis scilicet ad scutagium domini Regis quadraginta solidorum cum acciderit quadraginta solidorum et ad plus plus et ad minus minus De quibus seruiciis predictus Edmundus quondam vir etc. fuit seisisus per manus ipsius Roberti patris etc. vt per manus veri tenentis sui etc. Ita quod post mortem predicti Edmundi seruicium ipsius Roberti de predicto manerio per dominum Edwardum Regem patrem domini Regis nunc assignatum fuit ipsi Margarete tenendum nomine dotis etc. racione cuius Assignacionis predictus Robertus pater etc. attornauit se eidem

¹ There is an unusual mark in the manuscript at this point which seems to be some form of 'rest' or colon.

Notes from the Record—*continued*.

of the manor of Sternfield,¹ together with its appurtenances, belongeth to that same Richard until the lawful age of John, son and heir of Robert of Amundevill, by reason that the aforesaid Robert held that manor of him by knight service, and that the same Richard continued for a long time in full and peaceful seisin of the same wardship, she, the aforesaid Margery and the others, together with Adam Tascard and William of Tyveteshale, did violently eject the aforesaid Richard from that wardship, and his goods and chattels there found, to the value of sixty pounds, by force and arms did take and carry away and other injuries did to him, to the grievous damage of the same Richard and against the peace. And in respect of this the same Richard by Thomas of Brampton his attorney doth complain that because the aforesaid Robert, father of the aforesaid heir, held of him the aforesaid manor and its appurtenances by homage, fealty and the service of one knight's fee etc., of which homage, fealty and service the same Richard was seised by the hands of the said Robert, and because the same Robert died in his homage, therefore the wardship of the aforesaid manor until the lawful age of the aforesaid heir belonged to the said Richard; and the same Richard did for a long time continue in full and peaceful seisin of the same wardship. The aforesaid Margery and the others, together with etc. on the Thursday next before the Feast² of St. Peter in Chains in the fifth year of the reign of our lord the King that now is did with violence eject the aforesaid Richard from that wardship, and his goods and chattels there being etc., to wit, barley, oats, beans and peasen and hay, to the value of sixty pounds, with force and arms did take and carry away, and other etc. and against the peace etc.; whereby he saith that he suffered loss and hath damage in the amount of one hundred pounds. And thereof he produceth suit etc.

And Margery and the others come by Adam of Brom, her attorney. And he denieth force and injury when etc. And as to the taking and carrying away of the chattels aforesaid he denieth that they took or carried away those chattels as the aforesaid Richard doth complain. And of this the defendants do put themselves on the country. And Richard doth likewise. And as to the complaint of the said Richard that he hath been ejected from the aforesaid wardship etc. they say that the aforesaid Robert, father of the aforesaid heir, held the aforesaid manor of Edmund that was aforetime Earl of Cornwall and that was aforetime husband of this same Margery by homage, fealty and the service of one knight's fee, to wit, the payment to our lord the King of a scutage of forty shillings when it should be forty shillings, and more when more, and less when less. Of which services the aforesaid Edmund, aforetime husband etc., was seised by the hands of that same Robert, father etc., as by the hands of his true tenant etc.; so that upon the death of the aforesaid Edmund the service of that same Robert in respect of the aforesaid manor was assigned by the lord King Edward, father of our lord the King that now is, to this Margery to be held in the name of dower etc. And by reason of that assignment the aforesaid Robert, father etc. did attorn himself to the same

¹ Sternfield is about a mile and a quarter south of Saxmundham. ² August 1.

Notes from the Record—continued.

Margarete de fidelitate sua pro predictis tenementis etc. Ita quod iidem Margareta et alii recenter post mortem ipsius Roberti accesserunt ad predictum Manerium et inuenerunt ibi predictum Ricardum qui se in custodiam illam intrusit et illam occupauit et ipsum inde statim eiecerunt sicut eis bene licuit ratione predicta etc. vnde petunt iudicium.

Et Ricardus dicit quod predicti Margareta et alii iniuriam suam in hac parte excusare non possunt etc. Quia dicit quod alias in Curia domini Regis Edwardi patris domini Regis nunc hic in Crastino Sancti Martini anno regni sui decimo octauo coram Iohanne de Metingham et sociis suis Iusticiariis suis etc. leuauit quidam finis inter predictum Robertum de Mundeuill patrem predicti heredis querentem et Rogerum de Huntingfeld et Nicholam vxorem eius matrem ipsius Ricardi de Mundeuill cuius heres ipse est impediens de manerio predicto cum pertinenciis vnde placitum Warantie carte summonitum fuit inter eos etc. per quem finem predictus Rogerus et Nichola recognouerunt manerium illud cum pertinenciis esse Ius ipsius Roberti ut illud quod idem Robertus habuit de dono ipsorum Rogeri et Nichole tenendum eidem Roberto et heredibus de corpore suo procreatis de predictis Rogero et Nichola et heredibus ipsius Nichole imperpetuum etc. et faciat inde capitalibus dominis feodi illius pro predictis heredibus ipsius Nichole omnia seruicia que ad illud Manerium pertinent etc. vnde dicit quod predictus Robertus virtute finis predicti tenuit Manerium illud de ipso Ricardo et idem Ricardus illud tenuit vlterius de prefato Edmundo etc. et postmodo de predicta Margareta et seruicium quod predictus Robertus fecit predictis Edmundo et Margarete pro predicto Manerio fecit ipse vt attornatus ipsius Ricardi iuxta formam finis predicti etc. Et non vt tenens immediatus ipsorum Edmundi et Margarete etc. vnde petit iudicium etc.

Et Margareta et alii dicunt quod qualemcunque finem predictus Ricardus allegauit leuatum fuisse de predicto Manerio etc. predictus Robertus pater predicti heredis tenuit Manerium illud de predicto Edmundo quondam viro etc. immediate etc. et post mortem eiusdem Edmundi seruicium ipsius Roberti de predicto Manerio deuenit in seisina predicti domini Regis patris etc. et postmodo assignatum fuit ipsi Margarete tenendum nomine dotis sicut predictum est per quam assignacionem eadem Margareta similiter fuit seisita de seruicio eiusdem Roberti de eodem Manerio vt vere tenentis sui etc. immediate etc. Et de hoc ponunt se super patriam Et Ricardus similiter Ideo preceptum est vicecomiti quod venire faciat hic a die sancte Trinitatis in xv. dies xij. etc. per quos etc. Et qui nec etc. ad recognizandum [etc.] Quia tam etc.

Notes from the Record—*continued.*

Margery of his fealty for the aforesaid tenements etc.; so that the same Margery and the others straightway upon the death of the same Robert did go to the aforesaid manor and did find there the aforesaid Richard who had intruded himself into that wardship and seized it, and they did there and then eject him therefrom, as they were well entitled to do by reason aforesaid etc. And of this they ask judgment.

And Richard saith that the aforesaid Margery and the others cannot excuse their wrongdoing in this matter etc. For he saith that at another time in the Court here of the lord King Edward, father of our lord the King that now is, on the morrow of St. Martin in the eighteenth year of his reign, before John of Metingham and his companions, his Justices etc. a certain fine was levied between the aforesaid Robert of Mundevill, father of the aforesaid heir, complainant, and Roger of Huntingfield and Nicholas his wife, mother of the said Richard of Mundevill, whose heir Richard is, deforciant, in respect of the aforesaid manor and its appurtenances, touching which a plea of Warranty of Charter had been summoned between them etc.; and by this fine the aforesaid Roger and Nicholas recognised that manor, together with its appurtenances, to be the right of that same Robert, as that which the same Robert had of the gift of those same Roger and Nicholas to hold to the same Robert and to the heirs of his body begotten of the aforesaid Roger and Nicholas and the heirs of the same Nicholas for ever etc.; and he is to render therefor to the chief lords of that fee, on behalf of the aforesaid heirs of the said Nicholas, all the services appurtenant to that manor etc. Wherefore he saith that the aforesaid Robert, by virtue of the aforesaid fine, did hold that manor from him, Richard, and the same Richard held it more directly of the aforesaid Edmund etc. and afterwards of the aforesaid Margery; and the service which the aforesaid Robert rendered to the aforesaid Edmund and Margery for the manor aforesaid he rendered as the attorney of him, Richard, according to the form of the fine aforesaid etc. and not as holding immediately of the said Edmund and Margery etc.; and of this he asketh judgment.

And Margery and the others say that notwithstanding any fine whatsoever which the aforesaid Richard may allege was levied in respect of the above manor etc., the aforesaid Robert, father of the aforesaid heir, held that manor immediately of the aforesaid Edmund, that was aforetime husband etc., and after the death of the same Edmund the service of that same Robert in respect of the aforesaid manor came into the seisin of the aforesaid lord King, father etc. and was afterwards assigned to this Margery to hold in the name of dower, as is aforesaid; and in virtue of this assignment the same Margery was similarly seised of the service of the same Robert in respect of the same manor, as of her true tenant etc. immediately etc. And of this they do put themselves upon the country. And Richard doth likewise. Therefore the Sheriff is charged that he make come here on the quindenes of the Holy Trinity twelve etc. through whom etc. and who are neither etc. to make recognition etc. Because both etc.

Notes from the Record—*continued*.

II.

Feet of Fines, Case 216, File 41, No. 18.

Hec est finalis concordia facta in Curia domini Regis apud Westmonasterium In crastino sancti Martini Anno Regni Regis Edwardi filii Regis Henrici octauo decimo Coram Iohanne de Metyngham Roberto de Hertford Elia de Bekyngham Willelmo de Giselham et Magistro Roberto de Thorp Iusticiariis et aliis domini Regis fidelibus tunc ibi presentibus Inter Robertum de Mundeuill querentem et Rogerum de Huntyngfeld et Nicholam vxorem eius impediētes de Manerio de Sterne Feld cum pertinenciis vnde placitum Warancie carte summonitum fuit inter eos in eadem Curia Scilicet quod predicti Rogerus et Nichola recognouerunt predictum Manerium cum pertinenciis esse Ius ipsius Roberti vt illud quod idem Robertus habet de dono predictorum Rogeri et Nichole Habendum et tenendum eidem Roberto et heredibus suis de corpore suo procreatis de predictis Rogero et Nichola et heredibus ipsius Nichole imperpetuum. Reddendo inde per annum eisdem Rogero et Nichole tota vita ipsius Nichole duodecim libras sterlingorum ad duos terminos scilicet medietatem ad festum Sancti Michaelis et aliam medietatem ad Pascham Et si contingat quod predicta Nichola obierit viuente predicto Rogero tunc post decessum ipsius Nichole predictus Robertus et heredes sui erunt quieti de solucione predictarum duodecim librarum. Et reddent singulis annis eidem Rogero tota vita ipsius Rogeri decem marcas Argenti ad predictos terminos. Et post decessum ipsius Rogeri predictus Robertus et heredes sui erunt quieti de solucione predictarum decem marcarum per annum imperpetuum. Et reddent singulis annis heredibus ipsius Nichole vnam Rosam ad festum Natiuitatis sancti Iohannis Baptiste pro omni seruicio consuetudine et exaccione ad predictos heredes ipsius Nichole pertinente. Et faciendo inde capitalibus dominis feodi illius pro predictis heredibus ipsius Nichole omnia alia seruicia que ad illud Manerium pertinent. Et predicti Rogerus et Nichola et heredes ipsius Nichole Warantizabunt eidem Roberto et heredibus suis predictis predictum Manerium cum pertinenciis per predicta seruicia contra omnes homines imperpetuum. Et pro hac recognicione Warancia fine et concordia idem Robertus concessit predictis Rogero et Nichole aduocacionem ecclesie predicti Manerii Habendam et tenendam eisdem Rogero et Nichole de predicto Roberto et heredibus suis predictis tota vita vtriusque ipsorum Rogeri et Nichole Reddendo inde per annum vnam Rosam ad festum Natiuitatis sancti Iohannis Baptiste pro omni seruicio consuetudine et exactione et predictus Robertus et heredes sui predicti Warantizabunt acquietabunt et defendent eisdem Rogero et Nichole aduocacionem predictae ecclesie per predictum seruicium contra omnes homines tota vita vtriusque ipsorum Rogeri et Nichole. Et post decessum vtriusque ipsorum Rogeri et Nichole

Notes from the Record—*continued.***II.****Feet of Fines, Case 216, File 41, No. 18.**

This is a final agreement made in the Court of the lord King at Westminster on the Morrow of St. Martin in the eighteenth year of the reign of King Edward the son of King Harry before John of Metingham, Robert of Hertford, Elias of Beckingham, William of Gisleham and Master Robert of Thorp, Justices, and other loyal subjects of the lord King then and there present, Between Robert of Mundevill, complainant, and Roger of Huntingfield and Nicholas his wife, impedients, touching the Manor of Sternfield with the appurtenances, in respect of which a plea of Warranty of Charter hath been summoned between them in the same Court: To wit, that the aforesaid Roger and Nicholas recognised that the aforesaid Manor with the appurtenances is the right of that same Robert as that which the same Robert hath of the gift of the aforesaid Roger and Nicholas, to have and to hold to the same Robert and the heirs of his body begotten, of the aforesaid Roger and Nicholas and the heirs of the same Nicholas for ever, paying therefor every year to the same Roger and Nicholas during the whole life of the said Nicholas twelve pounds sterling at two terms, that is to say one moiety on the Feast of St. Michael and the other moiety at Easter; and if it should happen that the aforesaid Nicholas should die during the lifetime of the aforesaid Roger, then after the death of the same Nicholas the aforesaid Robert and his heirs shall be quit of the payment of the aforesaid twelve pounds. And they are to pay every year to the said Roger during the whole life of the same Roger ten marks of silver at the aforesaid terms. And after the death of the same Roger the aforesaid Robert and his heirs shall be quit for ever of the payment of the aforesaid ten marks a year. And every year they are to render to the heirs of the said Nicholas a Rose upon the Feast of the Nativity of St. John the Baptist for all services, customs and exactions pertaining to the aforesaid heirs of the said Nicholas, and they are to render to the chief lords of that fee on behalf of the aforesaid heirs of the aforesaid Nicholas all other services that may be appurtenant to that Manor. And the aforesaid Roger and Nicholas and the heirs of the same Nicholas will, in consideration of the aforesaid services, warrant to the same Robert and his heirs aforesaid the aforesaid Manor with the appurtenances against all men for ever. And in consideration of this recognition, warranty, fine and agreement the same Robert hath granted to the aforesaid Roger and Nicholas the advowson of the church of the aforesaid Manor. To have and to hold to the same Roger and Nicholas of the aforesaid Robert and his heirs aforesaid during the whole life of each of the same Roger and Nicholas, rendering therefor every year on the Feast of the Nativity of St. John the Baptist a Rose for all services, customs and exactions. And the aforesaid Robert and his heirs aforesaid will, for the service aforesaid, warrant, acquit and defend to the same Roger and Nicholas the advowson of the aforesaid church, against all men during the whole life of each of the same Roger and Nicholas. And after the death of both these same Roger and Nicholas the aforesaid advowson of

Notes from the Record—*continued*.

predicta aduocacio predictae ecclesie integre reuertetur ad predictum Robertum et heredes suos predictos quiete de heredibus ipsorum Rogeri et Nichole Tenenda simul cum predicto Manerio quod ei per finem istum remanet de heredibus ipsius Nichole per predicta seruicia sicut predictum est imperpetuum. Et si contingat quod predictus Robertus obierit sine herede de corpore suo procreato tunc post decessum ipsius Roberti predictum Manerium cum pertinenciis integre remanebit rectis heredibus ipsius Nichole quiete de aliis heredibus ipsius Roberti Tenendum de capitalibus dominis feodi per seruicia que ad illud Manerium pertinent imperpetuum.

12. THE KING *v.* THE ARCHBISHOP OF YORK.¹I.²

Quare impedit porte deuers lerceuesqe ou il ne clama mes cum metropolitanus et issi auoit presente a la vikerie com ordiner ou fut bien plede qe ceo fut layte et nient espirituale.

Le Roy porta son quare impedit vers William ³Ercheusqe de Euerwyk⁴ et dit qe a ly apent a presenter a la vicarie de Nortone⁵ qe voide est et a sa donysoun apent par la raison qe vn Antoyne de Bek iadis euesqe de Durham presenta vn son clerk I. par noun a la vicarie auantdit etc. en temps de pees etc. issynt qe mesme cesti Antoyne morust etc. par qi le Roi auoit la garde le see vacant en qe tens la vicarie se voida par la mort I. issint apent au Roi etc. et issint le destourbe atort etc.

Herl. Cest court ne poet conustre etc. qar nous vous dioms qe Nortone est deynz la fraunchise de Durham ou cest court ne poet conisance auer iugement etc.

Scrop. Le Roy si est partie a ceste quare Impedit ou il ne serra mye chace a pleder en autre court qe en sa court demesne iugement etc.

Berr. Si autre homme fut partie qe le Roy vostre respounse si lyreit par auenture mes le Roy se pleint etc. et pur ceo ⁶il vous couent respoundre⁷ racione predicta.⁸

Herl. La chose est espirituele ⁸par qi nentendoms mie qe la court cit poer a Conustre.⁹

¹⁰ A lendemeyn.¹¹

Scrop. Clamez¹² riens vt supra en lauesoun.

¹ Reported by *B, C, G, L, P, T, Q.* ² Text of (I) from *C*, collated with *B, L, P, Q*, and *T*. Headnote from *Q*. The headnote in *B* is: Quare impedit par le Roy de la Donesoun de vne vicarie qe se voida en temps de vacacioun. ³⁻⁴ Hurceuek, *B*; Horceuek, *P, Q.* ⁵ Sottone, *T.* ⁶⁻⁸ respounez, *L, P.* ⁷ responez, *L.* ⁸⁻⁹ added from *L.* ¹⁰⁻¹¹ *B, P* omit. ¹² clamez vous, *L, Q.*

Notes from the Record—*continued*.

the aforesaid church shall wholly revert to the aforesaid Robert and his heirs aforesaid, undisturbed by the heirs of the same Roger and Nicholas To hold, together with the aforesaid Manor which remaineth to him by this fine, of the heirs of the same Nicholas by the aforesaid services as is aforesaid for ever. And, if it happen that the aforesaid Robert die without heir of his body begotten, then, after the death of the said Robert, the aforesaid Manor with the appurtenances shall wholly remain to the right heirs of the said Nicholas without disturbance by the other heirs of the said Robert, To hold of the chief lords of the fee by the services which appertain to that Manor for ever.

12. THE KING *v.* THE ARCHBISHOP OF YORK.¹

I.

Quare impedit brought against the Archbishop, where he claimed as Metropolitan only, and had presented to the vicarage as Ordinary. It was successfully pleaded that the advowson was lay and not spiritual.

The King brought his *quare impedit* against William, Archbishop of York,² and said that it belonged to him to present to the vicarage of Norton, which is void; and it belongeth to his gift by reason that a certain Anthony of Bee³ that was aforesaid Bishop of Durham presented one J. by name, his clerk, to the vicarage aforesaid etc., in time of peace etc., and this same Anthony died etc. Wherefore the King had the wardship of the vacant see. And during that time the vicarage was voided by the death of J. Therefore it belongeth to the King etc., and so the Archbishop doth wrongfully disturb him.

Herle. This Court hath not jurisdiction etc., for we tell you that Norton is within the franchise of Durham where this Court hath no jurisdiction. Judgment etc.

Scrope. The King is a party to this *quare impedit*, and he shall not be driven to plead in any Court save his own Court. Judgment etc.

BEREFORD C.J. If any other than the King were party, then, peradventure, there might be somewhat in your answer; but it is the King that complaineth etc., and so, for the reason aforesaid, you must needs answer.

Herle. The matter is spiritual, and therefore we submit that the Court hath no jurisdiction.

On the morrow—

Scrope. You claim naught in the advowson, as above?

¹ See the *Introduction*, p. xvii.

² William of Grenefeld, Archbishop from 1306 to 1315.

³ Anthony of Bee, Archdeacon of

Durham and the King's Secretary, was consecrated Bishop January 9, 1283. He died March 3, 13

¹ *Herl.* La chose est espirituele iugement si cest court pusse conustre.

Denom. Clames riens ut supra.²

Herl. Nous vous dioms qe apres la mort Antoyne nous sumes gardeyn ³ de la chose espirituale ⁴ auxi cum Metropolitan de lue issint qe vacant la see nous donames la vikerie cum chose espiritual etc. com il appent etc. et autre chose ne clamons.

Scrop. Ore demandons nous iugement depus qe le Roy ad moustre title pur ly par la raison qe Antoyne presenta cum de dreyt de sa eglise etc. queu dreyt est acru au Roy vacant le see auxi cum gardeyn et vous ne affermez point title de dreyt en vostre persoune qe vous doune estat de presentement iugement ⁵ pur le Roy et ⁶ prioms bref al Euesk.

Herl. Et nous iugement ⁷ de pus qe vicarage est chose espiritale ⁸ et seuere de la personage qe est la possessioun et lauowesoun et par consequens chose espiritale ⁹ qe appent a donesoun de ordyner et ¹⁰ nous auxi cum metropolitan vacant le See ¹¹ auoms presente ¹² la nous demandons iugement si vous deuez estre resceu.

Pass. Si le Euesk Antoyne en soun tens eust este destourbe a presenter etc. il eust eu soun quare Impedit ou dareyn presentement de cest vicarie yci en ceste court et eust dereyne sa possessioun auxi cum leyte ¹³ iugement del houre qil auoyt leyte en ceste possessioun tut soun tens si le Roy qe est gardeyn del temporalite vacant le see en queu tens ceste vicarage voyda ne deyt le presentement de ceste possessioun recoueryr.

Herl. La vicarage est chose ¹⁴ espiritale et est seuere de la vowesoun qe est la possessioun par assent de Euesk et de patroun la quele donysoun appent al Euesk ¹⁵ car si ceo noun si auereit vn home .ij. auowesouns de vne eglise ¹⁶ la ou deuant nauoit qe vne quod est inconuenience de ley.

Pass. Non est inconuenience ¹⁷ de ley ¹⁸ care homme auera bref ¹⁹ quod permittat presentare etc. ad vicariam de cel leu vel ad ecclesiam de N.²⁰ etc. qe est la personage care si par assent de Euesk et de patroun de vne Eglise seit fet vicare et persoune la ou auant ne fut for qe persoune lauowesoun de la vicarage si appent au Patroun ²¹ pur ceo qe ele est parcele de lauowesoun qe est la possessioun de qe est en la persoune le Patroun care si le gros seyt leyte auxi est ceo qe est membre.

¹⁻² L omits. ³⁻⁴ del Eglise et del espiritualite, P, L; del espiritualite, T. ⁵ Ingh. B. ⁶ B omits. ⁷⁻¹⁰ desicom la vicarie est chose espiritual qappent a donesoun de ordinare, L. ⁸⁻⁹ B omits. ¹¹⁻¹² From P. C has etc. ¹³ lay fee, P, L. ¹⁴ Added from L. ¹⁵⁻¹⁶ P omits. ¹⁷⁻¹⁸ Added from Q. ¹⁹ Supplied from B, Q. ²⁰ tiel lieu, P, L. ²¹ P adds de Cee.

Herle. The matter is spiritual. Judgment whether this Court hath jurisdiction.

Denom. You claim naught, *as above*?

Herle. We tell you that upon the death of Anthony we became guardian of the spiritualities as Metropolitan of the place; so that, during the vacancy of the See, we presented to the vicarage, as a spiritual matter etc., as belongeth etc.; and we claim naught else.

Scrope. Now we ask judgment, seeing that the King hath shown title in himself from the fact that Anthony presented as in right of his Church etc., which right hath accrued to the King, as guardian during the vacancy of the See, and that you establish no right in your person which entitleth you to present. Judgment for the King; and we pray a writ to the Bishop.

Herle. And we ask judgment since the vicarage is a spiritual thing and severed from the parsonage, which is [capable of] possession, and from the advowson; and is consequently a spirituality which belongeth to the gift of the Ordinary; and we, during the vacancy of the See, as Metropolitan, have presented. And so we ask judgment whether you ought to be received.

Passeley. If Bishop Anthony had been disturbed in his time in his presentation, he would have had his *quare impedit* or *darein presentement* in respect of this vicarage here in this Court and he would have proved his right to possess it as being his lay fee. Seeing, then, that what he had in possession here was lay fee during all his time, we ask judgment whether the King, that is guardian of the temporalities during the vacancy of the See, during which vacancy this vicarage was voided, ought not to recover the presentation of this possession.

Herle. The vicarage is a spiritual thing and hath been severed from the advowson, which is possessional, by assent of the Bishop and patron; and the gift of it belongeth to the Bishop; else would a man have two advowsons of one church, where before he had but one; and that would be an incongruity of law.

Passeley. It would be no incongruity of law, for a man shall have a writ of *quod permittat presentare* etc., either in respect of the vicarage of the place or of the church of N. etc., meaning the parsonage; for if by the assent of the Bishop and the patron of a church there be made both vicar and parson where before there was but parson, the advowson of the vicarage belongeth to the patron, because it is parcel of the advowson, the possession of which is in the person of the patron; for if the whole be lay, so also must the parcel be. And as for what you

Et qant a ceo la qe vous ditez qe¹ .ij. auowesounes de vne Eglise ne pount demorren en vne persoune vous ditez mal Teste sire I. de Brutayne qe recouera² lauowesoun³ dune Eglise vers vn homme et pus⁴ la vicarage de mesme la Eglise vers mesme la persoune en ceste court.

Toud. A la Eglise de Euerwyke si le Ercheuesk seit mort et vn⁵ prouendre se voyde le Rey le⁶ durra etc. mes si vne vicarage se voyde⁷ mesme le prouendre⁸ Le Chapitre le durra cum chose espiritale vacant le see et ne mye le Roy par qi il semble qe vicarage est chose espiritale.

Denom. A⁹ la primer foundance¹⁰ chescune¹¹ auowesoun de¹² Eglise¹³ fut layte¹⁴ etc. et¹⁵ la vicarage si est parcel¹⁶ etc.¹⁷ deuant ces heures la chose fut¹⁸ annexe a la¹⁹ commune²⁰ auxi cum²⁰ leyte ou²¹ vous ne poez cel parcel seuerer²² du gros qest leyte et la fere espiritualte sanz fet du Roy qe ceo testmoygne et vous ne moustrez nul etc. iugement.

Herl. Auera le vikere le Iure de²³ vtrum vers la persoune de mesme la Eglise quasi diceret noun quia nent leyte ergo espiritalet.

²⁴ *Scrop.* Auxi cum le Roy fet vowesoune de ceste vicarage leyete auxi il couent fere etc. et par cause.²⁵

²⁶ *Berr.* Si la persoune ostast le viker il pledereit en la court chrestiene et si de soil annexe a sa vicarage par assise de nouel disseisine²⁷ en ceste court.

Pass. Gent de religioun qe vnt Eglise en propres vses il frount vn vikere etc. et si la vicarie seit voyde per lapsum temporis le Euesk la durra cum chose espirituel²⁸ mes en ceo cas le Euesk ne put auer nule Eglise en propres vses par qi il²⁹ deit fere viker³⁰ eynz doune ceo vikerage cum leyete³¹ possessioun et dreyt³² est acru au Roy vacant le see etc. iugement etc.³³

Berr. Tant amount qe cest auowesoun³⁴ est leyete etc. et issint appent au Roy et il dit qe ceo est espiritalt etc. et il ad done cum

¹ a, B. ² recouerist, P. ³ vne auowesoun, L. ⁴ L, P add lauoweson de.
⁵ vne, B. ⁶ la, B. ⁷⁻⁸ de mesme la eglise prouendre, L. ⁹ B omits.
¹⁰ B adds de. ¹¹⁻¹² Supplied from L. ¹³ eglise et auowesoun, P, B, Q.
^{14, 15} mes, P. ¹⁶ L, P add annexe. ¹⁷ B, L, P add la ou. ¹⁸⁻¹⁹ en,
L, P. ²⁰⁻²⁰ Q omits. ²¹ et, P. ²² deseuerer, L. ²³ B omits.
²⁴⁻²⁵ L and P omit. ²⁶⁻²⁷ *Berr.* si la persoune oustat le vicere etc. ou pledereit
il etc. *Rouberry* sil fust oste en court chrestiene si de soil affermant a sa vicarie
par assise de nouele disseisine, B, P. ²⁸⁻³³ eynz a doner ceste vicarie com lay
fee possessioun et dreit est acru au Roi vacaunt le Cee etc. iugement etc., P.
²⁹ B adds ne. ³⁰⁻³³ com ley fee com de dreit de sa eglise etc. quel dreyt est
acru a nostre seignour le Roy vacant le see iugement etc., T. ³¹⁻³² et du dreit
de sa Eglise de seynt Cuthbert etc. qe layete possession et dreit, B, Q. ³³ to 4
on p. 60 T omits. ³⁴ vicarie, Q.

say that two advowsons of one church cannot rest in one person, you say it without book, and let Sir J. of Brittany be witness to that, who recovered the advowson of a church against a man, and then the vicarage of the same church against the same person in this Court.

Toudeby. In the Church of York, if the Archbishop be dead and a prebend become vacant, the King will bestow it etc. ; but if a vicarage of the same prebend become vacant the Chapter, during the vacancy of the See, will bestow it as a spirituality, and not the King ; wherefore it appeareth that a vicarage is a spirituality.

Denham. At the first foundation of every church the advowson was lay fee etc., and the vicarage is parcel etc. It was at one time annexed to the full advowson as lay fee, and you cannot sever this parcel from the gross, which is lay fee, and make a spirituality of it without a deed from the King witnessing this ; and you show no such deed. Judgment.

Herle. Can a vicar have the *iure de utrum* against the parson of the same church ?—*inferring that he could not.* Therefore, not being lay fee, it is a spirituality.

Scrope. As the King maketh the advowson of this vicarage lay fee, it ought to be such, and for good reason.

BEREFORD C.J. If the parson were to eject the vicar, the vicar would plead in Court Christian ; and if [he were ejected] from land annexed to his vicarage [he would plead in this Court] by an assise of novel disseisin.

Passeley. Such religious as have a church for their own use appoint a vicar etc., and if the vicarage remain vacant the Bishop will bestow it *per lapsum temporis* as a spirituality, but in these circumstances the Bishop cannot have a church for his own use, entitling him to make a vicar, but he giveth this vicarage as being of lay fee, the possession and right of which accrued to the King during the vacancy of the see etc. Judgment etc.

BEREFORD C.J. All that only amounts to an assertion that the advowson is lay fee etc., and so belongeth to the King, while the Archbishop saith that it is a spirituality etc., and so doth not belong

Metropolitan ¹ vacant le Cee et issint apentmye au Roi mes sil fust autre
 qe Metropolitan ² qe lust done nous aueroms tost done iugement
 quasi diceret le Roy recouereit mes pur ceo qe nous nauoms mye vewe
 le cas auant attendez vos iours.³

Ad alium diem.

Herl. Vt supra.⁴

*Berr.*⁵ La ou vn auowesoun est departie en diuers parces ⁶ de
 chescune partie homme auera bref sil seit destourbe et recouera etc.
 et cest pur ceo qe la primer nessance ⁷se sourdy⁸ de layete etc. mez
 si lauowesoun seit demande vers ly il perdera lenter par vn bref et
 ne mye pas vne parcele pur ceo qe la seueralete ⁹ fet en le meen tens
 ne seure mye laccioun le demandaunt qe demande de plus haut et
 pur ceo ne vous ne clamez rien en lauowesoun pur rens qe vous auez
 vncore dit ¹⁰si noun com¹¹ Metropolitanus qe ne oste mye le Roy de
 soun title qest fondu en layte si ne volez plus dire.¹²

Herle. De pus qe ceste vicarie est espiritual ¹³et nous lauoms done
 com chose esperituele ou¹⁴ nostre predecessour le dona deuant en tens
 vacacioun apres la mort etc. et soun predecessour deuant¹⁵ ly etc. en vn
 autre¹⁶ tens de vacacioun touz iours cum chose espiritual et nous en
 mesme la manere lauoms done iugement¹⁷ etc.

Pass. Et nous iugement de pus qe cele vicarie est parcele ¹⁸du gros¹⁹
 qe est layete et le euesk eyt presente a cele vicarie cum du dreyt de
 sa eglise dount ²⁰mes qil²¹ ad estat de Patroun ²²et de euesk ²³sil ad fet²⁴
 vicare la ley entent touz iors qil ad presente cum patroun a ceste vicarie
 et ne mye cum ordiner²⁵ Pur ceo qe la possessioun est leyte dount
 ceste vicarie sourde²⁵ qe est parcele car vicare ne put estre sanz
 assent de persoune et de patroun et de Euesk Dont couent qe la
 porcioun seit amesure del persounage et cel amesurement ne ²⁶se freit²⁷
 iaumes sanz assent de Patroun la quele porcioun amesuree pur la cure
 des almes ne chaunge²⁸ pas lestat de Patroun ne tourne ceste pos-
 sessioun de layte en espiritualite qe le patroun ne deit presenter touz
 iors²⁹ cum auant fit³⁰ et nous auoms moustre qe le Euesk fut verrey

¹⁻² Supplied from *B* and *Q*; *Q* having leuesqe qest metropolitanus for metro-
 politan in *B* and *P*. ³ iugements, *P*. ⁴ from ³³ on p. 59 *T* omits. ⁵ *P* omits, and
 makes what follows part of *Herle's* speech. ⁶ *T* adds vt supra. ⁷⁻⁸ de sourde,
B; sourde, *L*, *T*, *Q*; surd, *P*. ⁹ seuerance, *B*, *L*, *P*, *T*. ¹⁰⁻¹¹ mes com, *B*.
¹⁰⁻¹² si vous ne voilliez plus dire apres si noun com le quel nest mye nostre seignour
 le Roy de soun title qest foundu sur lay fee par quay nous vous demandoms si
 vous voilliez plus dire, *T*. ¹³⁻¹⁴ Supplied from *B*, *L*, *P*, *Q*; *P* having clamoms
 for clamons. ¹⁵⁻¹⁶ en, *B*. ¹⁷ Added from *B*. ¹⁸⁻¹⁹ from *B*, *P*, *L*;
C has de cel Eglise. ²⁰⁻²¹ il mesme qe, *B*; il mesmes, *P*. ²²⁻²⁵ a ceste
 vicarie et ne mye com ordinaire, *P*. ²³⁻²⁴ sil y ad, *Q*. ²⁴ *B* omits.
²⁵ From *B*, *L*, *Q*; *C* has demande. ²⁶⁻²⁷ serra fet, *B*. ²⁸ charge, *B*.
²⁹ *L* adds com lai fee. ³⁰ freez, *B*.

to the King, and that he hath given it as Metropolitan, during the vacancy of the See. If it had been any other than Metropolitan who had given it we should speedily give judgment—*inferring that the King would recover*—but, seeing that the circumstances are novel, await your days.

On another day—

Herle as before.

BEREFORD C.J. Where an advowson is divided into divers parcels, a man may have a writ in respect of each parcel, if he be disturbed, and he will recover etc. And this because its first origin arose from lay fee etc. But if the advowson be claimed from him he may lose the whole under a single writ, and not merely a parcel, because a severance made in the meantime¹ does not make any severance of the action of the claimant, who made a full claim. And because you, for all you have yet said, claim naught in the advowson save as Metropolitan, that will not oust the King from his title, which is based upon this thing being of lay fee ; unless there be something more that you want to say.

Herle. Since this vicarage is a spirituality, and we have given it as a spirituality, as our predecessor gave it aforetime when the see was vacant by the death of etc., and as his predecessor before him etc. during another vacancy, always as a spirituality, and we have given it in the same manner, judgment etc.

Passeley. And we ask judgment seeing that this vicarage is parcel of the gross which is lay fee, and the Bishop hath presented to this vicarage as of the right of his church. Although he is both patron and bishop, yet, when he hath made a vicar, the law hath always understood that he hath presented to this vicarage as patron and not as Ordinary,² because he is in possession as of lay fee, from which this vicarage ariseth, being parcel of it ; for a vicarage cannot be constituted save by assent of parson and patron and bishop, for the stipend of the vicarage must be allocated from the parsonage, and this allocation can never be made except by the assent of the patron. And this stipend, allocated for the cure of souls, changeth not the estate of the patron, nor doth it turn this lay fee into a spirituality to the effect that the patron cannot always present as he did before. And we have shown that the Bishop was

¹ *I.e.* between purchase of writ and judgment.

² The Bishop would present as Ordinary when the patron had failed to present within six months from the time when the vicarage became vacant.

This was one of the matters in which English Law was in disagreement with the Canon Law, which gave the appointment to the Ordinary at the expiration of four months.

patroun la quele chose il ne dedient nent iugement si vacant le see ceste possessioun ne appent au Roy cum gardeyn etc.

¹*Berr.* William volez autre chose dire ²ou plus dire.³

William Herle. Iugement vt prius.

Berr. Pur ceo qe vous ne poez dedire qil⁴ nest patroun cum de dreyt de sa eglise etc. et qil presenta etc. cum patron et ne mye cum ordyner dont coment qil auoit estat de ambedeux ceo ne change mye la layte en espiritualite ne vous affermez nent dreyt de presenter en vostre persoune si noun cum metropolitan del leu le quel ne vous⁵ doune mye title en ceo cas de presenter si agarde la court qe le Roy eit bref etc. et non obstante etc.

II.⁶

Quare impedit de vicaria.

Le Roi porta quare impedit del presentement ala vicarie del Eglise de Nortone et counta qe Antone de Bek nadgers Euesqe de Durem com de dreit de sa Euesche presenta vn I. pus Antone morust Eueqe par qi les temporaltes deuindrent etc. a qel tens la vicarie se voida par etc. issint apres etc.

Herl. Norton est denz la franchise de dusrem et nentendoms pas qe vous voillez conustre.

Berr. Le Roi ne deit estre chace a pleder en altre court par qei dites outre.

Herl. Vicarie est chose espiritual et nentendoms pas qe vous voillez conustre.

pus *Herle.* Vicarie est espiritual de qi lauoueson append a persone espiritual com a persone ou ordiner et nous com mestre opolitan⁷ vacant le see presentoms et nentendoms pas qe le Roi deiue estre ressu.

Pass. Si le Euesqe vst este destorbe il vst en [*sic*] quare impedit ou drein presentement com de lai fe iugement si al Roi nappent a presenter.

Herl. Vicarie est seure de auoueson de Eglise par assent de patron et de ordiner de qei lauoueson appent a persone ou a ordiner qar autrement ensuereit qe home auereit .ij. auouesons dun Eglise.

Pass. Si dun Eglise par assent de patron seit fez vicaire et persone

¹⁻³ *Berr.* demand sil voleit plus dire ou de vn part ou de autre, *T.* ²⁻³ Added from *B, L, P, Q.* ⁴ qe leuesqe, *B.* ⁵ vse, *Q.* ⁶ Text of (II) from *X.*

⁷ The word is divided as above in the manuscript.

true patron ; and that is not denied. Judgment whether during the vacancy of the see this possession doth not belong to the King as guardian etc.

BEREFORD C.J. William, do you want to say aught else or aught more ?

William Herle. Judgment, *as before*.

BEREFORD C.J. Seeing that you cannot deny that the Bishop is patron as of the right of his Church etc., and that he hath presented etc., as patron and not as Ordinary ; and that, though he had the estates of both, that fact doth not change lay fee into spiritual ; and since you affirm no right to present in your person, except as Metropolitan of the place, a fact which in these circumstances giveth you no title to present, the Court doth award that the King have a writ etc., and notwithstanding etc.

II.

Quare impedit of a vicarage.

The King brought a *quare impedit* of the presentation to the vicarage of Norton, and counted that Anthony of Bee, aforetime Bishop of Durham, presented as of the right of his bishopric one J. Anthony died afterwards while Bishop, so that the temporalities fell etc., during which time the vicarage became vacant through etc., so that after etc.

Herle. Norton is within the franchise of Durham, and we submit that you have no jurisdiction.

BEREFORD C.J. The King ought not to be driven to plead in other Court [than his own] ; therefore plead over.

Herle. A vicarage is a spirituality, and we submit that you have no jurisdiction.

Herle—later. A vicarage is a spirituality, the advowson of which appertaineth to a spiritual person, as parson or Ordinary ; and we, as Metropolitan, present during a vacancy of the See ; and we submit that the King ought not to be received.

Passeley. If the Bishop had been disturbed he would have had a *quare impedit* or *darein presentement* as of his lay fee. Judgment whether it appertaineth to the King to present.

Herle. A vicarage may be severed from the advowson of a church by the assent of the patron and the Ordinary ; and the advowson of such vicarage appertaineth to the parson or the Ordinary ; for otherwise it would follow that the same man would have two advowsons in one church.

Passeley. If, by assent of the patron, both vicar and parson of a

la ou auant ne fu fors persone donques est la vicarie parcele et membre et deit est de mesme la nature com son gros Et qant a .ij. auouesons en vne Eglise vous dites qe vn patron ne peut auer amdeus si put Teste Iohanne de Bretagne qi recouera lauoueson del Eglise de T. vers B. et pus recouera lauoueson de la vicarie de mesme leglise vers mesme la persone.

Toudi. En tens de vacacion del Euesche de Euerwik si vn prouandre se void le Roi presentera et si vicarie de mesme la prouandre se void le chapitre le durra com chose espirital.

Pass. Depus qe lauoueson del eglise enter fu lei fe al comencement vous ne poez torner lauoueson de null parcel hors de laite sanz fet de Roi.

Herl. Vicare ne put pas vser Iure de vtrum vers persone de mesme la eglise.

Berr. Si eglise seit departi en diuers auouesons celi qe laueit com vne auoueson de plus halt dreit le part demandera com vne auoueson et issint le recouera non obstante les seuerancez en le mesne tens sic hic.

Herl. Vt supra.

Berr. Pur ceo qe vous ne poez dedire qe le Euesqe ne presenta com patron et nent com ordiner et vous ne affermez null dreit en vostre persone si noun com mestre opolitan qe nest pas tite en ceo cas si agarde la court qe le Roi recouere le presentement et eit bref al Euesqe sanz damages.

III.¹

Quare impedit de vne vicarie ou a comencement la fraunchise fut chalenge similiter petitur eadem libertas in alio placito in termino Michaelis anno .xvj^o. sed hic non habuit locum quia Rex fuit pars.

Le Roy porta son quare impedit deuers Lerceuesqe de Euerwyc et counta qe atort ly destorbe presenter couenable persone a la vicarie de Nortone qe voide est et a sa doneson etc. Et pur ceo atort qe la Euesche de Dureyime se voida par la mort Antoyne de Bec iadis euesqe de dureyime par qi qe le Roy sesi les temporautes par reson de vacacoun durant quele vacacoun la Eglise de Nortone se voida par la mort de I. de E. qe fut presente par le vesqe de Dureyime etc. issi apent a presenter.

¹ Text of (III) from *G*.

church be made where before there was a parson only, the vicarage consequently is parcel and member of, and must be of the same nature as its gross. And as to what you say as to two advowsons of one church, that one patron cannot have both, witness the case of John of Brittany, who recovered the advowson of the church of T. against B., and then recovered the advowson of the vicarage of the same church against the same person.

Toudeby. If a prebend fall vacant during a vacancy in the Bishopric of York the King will present to it; but if a vicarage of the same prebend fall vacant the Chapter will present to it as a spirituality.

Passeley. Since the full advowson of the church was lay fee originally, you cannot change any parcel of the advowson into other than lay fee without a deed from the King.

Herle. A vicar cannot use the *iure de utrum* against the parson of the same church.

BEREFORD C.J. If a church be parcelled into divers advowsons he that had the full right of a single [and unparcelled] advowson will claim the parcel as an unparcelled advowson, and will recover it as such, the severances in the meantime notwithstanding. So here.

Herle as before.

BEREFORD C.J. Seeing that you cannot deny that the Bishop presented as patron and not as Ordinary, and that you affirm no right in your own person save as Metropolitan, which is no title at all in these circumstances, the Court awardeth that the King recover the presentation and have a writ to the Bishop, without damages.

III.

Quare impedit of a vicarage, where, at the beginning, franchise was claimed; as was the same franchise in another plea in Michaelmas term of the sixteenth year; but in the present case it was not allowed, as the King was a party.

The King brought his *quare impedit* against the Archbishop of York, and counted that the Archbishop wrongfully disturbed him from presenting a fit person to the vicarage of Norton, which is void and belongeth to his gift etc. And wrongfully for these reasons. The Bishopric of Durham became vacant through the death of Anthony of Bec, aforetime Bishop of Durham; wherefore the King seized the temporalities by reason of the vacancy. During this vacancy the church of Norton became void by reason of the death of J. of E., who was presented by the Bishop of Durham etc. Consequently it appertaineth to the King to present.

Herle. Vous auet icy le baillif le vesqe de Dureyime et dit qe le Euesqe si ad tel fraunchise qil ad regaute en sa fraunchise Chauncerie et autre chose qe apent a reale fraunchise et ad pouwer de pleder iescun maner de plee qest deinz sa Iurisdicioun Et vous dit qe la Eglise de Nortone si est deinz sa iurisdicioun et deinz sa fraunchise. Et prie sa fraunchise.

Scrop. Le Roy ne deit nule part pleder mesqe en sa court demesne.

Herle. De pus qe leuesqe deit auer sa fraunchise et homme ne put assigner nule default en sa persone par qi il deit sa fraunchise perdre iugement. Item si nous pledassoms pur leuesqe et nous dessendoms en pays le viconte entra en la fraunchise pur fere venir la pays par la ou nul Ministre le Roy ne entre ne ne deit entrer si noun par default qen ens seit troue et conu qe le viconte de N. testmoigne eyt laccion sor leuesqe qe la Eglise est deinz la fraunchise de Dureyime.

Berr. Vous mettet auant .ij. choses. Le office du viconte et la fraunchise et ceus sunt deus pointz de chalenge. Mes qant al office du viconte nous frooms been.

Denom. La prerogatif le Roy est plus haut qe nule fraunchise par qi etc. Item si le Roy vst porte son bref en la fraunchise et ne poyt auer recouerer de la vousoun duraunt la vacacioun serroit ceo resoun qil fut chace de pleder aillors qen sa court demesne.

Berr. Pur ceo qe lestat le Roy et de sa Corone est plus qe nule fraunchise et la ley ne veet pas qil deit pleder aillors qen sa court demesne. Car le vesqe si est tenant le Roy Si le Roy dunqe pledereit en la court le vesqe si pledereit le seingnour en la court son tenant qe ne serroit pas suffrable de ley par qi etc.

Toud. Lerceuesqe si est metropolitan del Euesqe du Dureyn issi qe apres la mort Antoyne de Bec iadis Euesqe de Dureyim les espiritualetez deuyndrent en sa mayn en tens de vacacioun en quel tens le vicarie de Nortone se voida com chose spirituale iugement¹ par qi il dona et issi ne clèyme il reen en la doueson.²

Scrop. Vous nauet pas dedit qe Antoyne de Bec ne dona ausicom nous auoms dit ne qe les temporautez deuyndrent en la Main le Roy par resoun de vacacioun ensemblement oue la vouesoun par qi nous prioms bref al Euesqe.

Toud. Vous nauet pas party a nous Car leuesqe descleym en le vouesoun eynz dioms qil dona com chose espirituel.

¹ This word is evidently misplaced. It should have come at the end of the speech. ² Obviously a slip for vouesoun.

Herle. You have here the Bailiff of the Bishop of Durham who saith that the Bishop hath such a franchise that he hath royal powers within his franchise, a Chancery and what else there be that belongeth to a royal franchise, and that he hath power to plead every manner of plea that ariseth within his jurisdiction. And he telleth you that the church of Norton is within his jurisdiction and within his franchise.

Scrope. The King ought not to plead anywhere save in his own Court.

Herle. Since the Bishop ought to have his franchise and since no default in his person is assignable through which he ought to lose his franchise, we ask judgment. Further, if we were to plead [here] for the Bishop and should put ourselves on the county, the Sheriff will enter the franchise, to cause the jurors to come, into which franchise no minister of the King entereth or ought to enter save for default found and declared in it; and the Sheriff of N., the assessor of the Bishop, hath testified that the church is within the franchise of Durham.

BEREFORD C.J. You put forward two things: the office of the Sheriff and the franchise. These are two grounds for objection. As to the office of the Sheriff, we shall be quite able to deal with that.

Denham. The King's prerogative is higher than any franchise, wherefore etc. Further, if the King had brought his writ within the franchise and could not have recovery of the advowson during the vacancy, would that be a reason why he should be driven to plead elsewhere than in his own Court?

BEREFORD C.J. The estate of the King and of his Crown being higher than any franchise the law will not allow that he ought to plead elsewhere than in his own Court. For, the Bishop being the tenant of the King, if the King were to plead in the Bishop's Court the lord would be pleading in the Court of his tenant, which the law would not suffer. Therefore etc.

Toudeby. The Archbishop is Metropolitan of the Bishop of Durham, so that upon the death of Anthony of Bec, aforetime Bishop of Durham, the spiritualities came into his hand during the time of the vacancy, during which time the vicarage of Norton was voided, and the Archbishop presented to it, it being a spirituality, and he claimeth naught in the advowson. Judgment.

Scrope. You have not denied that Anthony of Bec presented as we have said, nor that the temporalities came into the King's hand, together with the advowson, by reason of the vacancy; wherefore we pray a writ to the Bishop.

Toudeby. You have not traversed what we say; for the Bishop disclaimeth aught in the advowson, and we say that he presented to the vicarage as a spirituality.

Scrop. Vous auet conu qe leuesqe dona et par tant vous auez conu qe vous estes desturbor. Car vous purret primes auer plede a la iurisdicioun a dire qe ceo fut chose espirituel a qele chose pleder la conissaunce ne appent point a ceste court.

Pass. ad idem. Si la vicarie se voydast en tenps Antoyne et vn estrange se vst abatu etc. i poyt auer porte son *quare impedit* ou derein presentement et ceo a la commune ley a recouerer com layte par qi etc. *Item* vicarie ne put estre ordine saunt assent du Patron persone et Ordinare. Car si la vicarie fut ordine saunz assent de Patron ceo serroit en sa destresse du patronage de pus qe le dreyt dil aduoueson est vn par qi etc.

Ceo est veyr
a prima
institucione
mes ex post
facto ele
put estre
amenuse
et anoyte
a la volente
dil Ordinare
et saunz
assent du
patron *per*
Scrope anno
xix^e.

Toud. Si par assent du Patron et dil Ordenare a vne vicarie fut assigne vne porcioun dil personage et la persone pus ostat le vickere de cele porcioun il nauereit autre remedie qe retourner al Ordinare. *Item* persone et vikere entre euz ne gist pas le *de vtrum*.

Frisk. La nessaunce qest layte et vn dreyt ne put estre demembre saunt le Patron Et desicom la donesoun de Nortone fut vn dreyt ceo ne put estre seure par qi qil chete en preiudiz le Roy.

Pass. Dreyt qest vne feye acru al Roy par reyson de sa Coroune ne put ia estre seure sil ne seit par especial graunt du Roy dunt vous dioms qe le dreyt dil aduoueson de ceste Eglise fut enterment append-aunt al Euesqe dunt cele vicarie est ore aporcione le quel aduoueson appent a nostre seingnour le Roy en tenps de vacacion par raison de sa seingnurie et cest layte le qel ne put estre seure ne aporcione si noun par graunt du Roy et il ne mustre nul graunt du Roy iugement.

Herle. Si la personage vst voyde en tenps de vacacion et le Roy vst presente et pus durant mesme cele vacacion la vikerie vst voide le Roy poyt presenter et issi ensuereit inconuenience de ley Car dont de vne mesme Eglise qest enter qe vn homme auereyt deus aduouesonz par qi etc.

Denom. Cest nest par inconuenience de ley qe qant vne Eglise en est seure par moytez etc. Le Patron porra presenter vne persone a cescune moyte.

Scrope. You have admitted that the Bishop presented, and by such admission you have admitted that you have disturbed us ; for it was open to you to begin by pleading to the jurisdiction, on the ground that this was a spiritual matter, over which matters this Court hath no jurisdiction.¹

Passeley ad idem. If the vicarage had become vacant in the time of Anthony, and a stranger had abated himself etc., Anthony could have brought his *quare impedit* or *darrein presentement* under the common law to recover, as being lay fee. Wherefore etc. Further, a vicarage cannot be constituted without the assent of the patron, parson and Ordinary. For if a vicarage were constituted without the assent of the patron it would be to the detriment of the patronage, since the right of the advowson is a single whole, wherefore etc.

This is true at the first institution thereof, but it may afterwards be diminished or extinguished at the will of the Ordinary and parson, without the assent of the patron : *per SCROPE J.*, anno xix.

Toudeby. If by assent of the patron and Ordinary a portion [of the profits] of the parsonage were assigned to a vicarage, and the parson afterwards ejected the vicar from that portion, the vicar would have no remedy except a complaint to the Ordinary. Further, the *de utrum* lieth not between parson and vicar.

Friskenev. The advowson is in its origin lay fee, and the right in it cannot be deparcelled without the consent of the patron. And since the donation of Norton was a single complete right it cannot be severed. Wherefore [the presentation to the vicarage] accrueth to the King.

Passeley. A right that hath once accrued to the King by right of his Crown can never be severed therefrom except by special grant from the King. Since, then, we tell you that the right in the advowson of this church, out of which advowson this vicarage is now parcelled, was wholly appurtenant to the Bishop, and, because of the King's lordship and because the advowson is lay fee, the advowson belongeth to our lord the King during a vacancy of the See ; and it cannot be severed or taken from him except by his own grant. And the Archbishop sheweth no grant from the King. Judgment.

Herle. If the parsonage had been voided during the vacancy of the See and the King had presented, and if afterwards, during that same vacancy, the vicarage had been voided, and the King could have presented, this would have been incongruous with the law ; for, in this way, one man would have two advowsons of one church, which is a single whole. Wherefore etc.

Denham. There is naught there incongruous with the law, for when a church is parcelled into moieties etc., the patron will present a parson to each moiety.

¹ According to the first report this exception was, in fact, taken.

Toud. ¹A Euerwic et a Nicole ily sunt prouendrez et chapitrez qe presentent les vicaries ausi par de sa et les vicaries de cel prouendre en tens de vacacion le Roy presenta a prouendrez et chapitrez et vicaries ausi par de sa.² *Item* lerceuesqe E. predecessor etc. dona mesme cele vicarie de mesme ceste Eglise en-au tel cas.

Berr. Vous tenet de autele condicion les Eglises Cathedrelez com les Eglises de autres come persones et sor ceo foundet vostre [respouns] nous entroms vostre respouns dune part et dautre et nous auiseroms etc.

Ad alium diem.

Pass. ³La ou homme graunt eglise par assent de Patron ily ad sextoun fet de moytez le Patron presentera a resoun moyte etc.⁴

Herle. Nest pas semblable entre lay patron et nostre cas. *Item* entre vikere et persone ne gist my le *Indicavit* ne bref de vtrum *Item* si la personage vst voide en tens de Leuesqe et il vst desturbe et portast son bref de dreyt et recouerat la vouesoun et pus se voidast la vicarie auereit il bref a demander la vouesoun de la vicarie certes nanyl qe ieo entenke qil est inconuenient de auer deus auouesons de vne Eglise enter.

Berr. Vous nauet nul tel bref *Precipe quod reddat aduocacionem Ecclesie ex cancellaria.*

Scrop. Homme put auer aduoueson de vikerie ausicom de personage et issi ad sire Ion de Brytaune en tote ces Eglises qil ad en Engleterre et la vouesoun ne put estre si noun lay fee.

Pass. ad idem. Si la persone donast la vikerie ceo serroit chose espirituel ausicom ily ad en cas ou ily ad Eglise en propre vs mes vous ne poet dire qe leuesqe dona la vikerie com persone eynz de dreyt de sa Eglise de saint Cuthbert par resoun de queu dreyt le Roy cleyme ceo presentement ausi com le dreyt de sa Coroune.

Toud. Vous auet entendu coment nous auoms dit qe leuesqe dona ausi com mestropolitan et le Ordiner del luw com chose espirituel et ren ne cleymunt en la voueson.

Berr. Vous dites trepoy qe vous ne assignet nule cause par qi vous dusset presenter Car vous ne assignet negligence de Patron *per lapsum temporis* ne autre resoun com presentement de persone

¹⁻² This speech appears to be corrupt, and an intelligible translation must be based upon a knowledge of what the text probably should have been rather than upon what it actually is. See the corresponding speech in the first version on p. 59 above.

³⁻⁴ This is apparently corrupt, but the translation on the opposite page probably gives the meaning of what the scribe should have written.

Toudeby. At York and at Lincoln there are prebends, and, during a vacancy of the See the Chapter appointeth to vicarages of these prebends, while the King appointeth to the prebends in such case.¹ Further, the Archbishop E., predecessor etc. presented to this same vicarage of this same church in like circumstances.

BEREFORD C.J. You are assuming that Cathedral Churches are of the same nature as other churches, such as parsonages, and base your answer upon this assumption. We shall make a note of the answers on each side and advise ourselves etc.

Upon another day—

Passeley. Where, with the assent of the patron, the office of Sexton is created and endowed with a moiety of the profits of the parsonage, the patron will present to it because it is a moiety etc.²

Herle. There is no similarity between the case of a lay patron and our case. Further, neither the *Indicavit* nor the writ of *utrum* lieth between vicar and parson. Further, if the parsonage be voided during the time of the Bishop, and the patron be disturbed and bring his writ of right and recover the advowson, and then the vicarage be voided, could he have a writ to claim the advowson of the vicarage? Certainly not; for I think that it would be incongruous to have two advowsons of a single unparcelled church.

BEREFORD C.J. You can get no such writ from the Chancery as *Precipe quod reddat aduocationem ecclesiae*.³

Scrope. A man may have the advowson of a vicarage as well as of a parsonage, as Sir John of Brittany had in all his churches that he had in England; and an advowson can be lay fee only.

Passeley ad idem. If the parson bestow the vicarage it would be because it is a spirituality, as in the present case where he hath a church appropriated to him; but you cannot say that the Bishop gave the vicarage as parson, but in right of his Church of St. Cuthbert; by reason of which right the King claimeth this presentation in right of his Crown.

Toudeby. You have heard us say how the [Arch]bishop presented as Metropolitan and Ordinary of the place as to a spirituality and how he claimeth naught in the advowson.

BEREFORD C.J. You say too little, for you show no cause for which you ought to present; for you assign neither lapse of time through the negligence of the patron to present, nor any other reason, such as the

¹ See the note ¹⁻² on the opposite page.

² See the note ³⁻⁴ on the opposite page.

³ Yet there is a writ in the *Register* running *Precipe A. quod iuste etc. reddat*

B. aduocationem ecclesie de S. quam ei iniuste deforciat ut dicit. And see Fitzherbert's *Natura Breuium*, 30. As an advowson is not 'maniable' it is not easy to see how it could be 'rendered.'

noun able par qi nous est auys de ceste part qil vous couent dire plus etc.

Toud. Vikarie nest qe porcion de personage et Ordinaunce des Ordiners vikere est souget a la persone et ad Cure des almez et ensi est ceste chose espirituele.

Berr. Vikerie ne put estre fet saunt assent de Patron. Et si la vikerie se voidast le patron auereit le derein presentement si de autre fut desturbe. *Item* si abbe qe tent Eglise en propre vs seit desturbe apres la mort le vikere il nad autre remede forqe en ceste court.

Toud. La presente il com persone et la porcion de la vikerie est ordine adisposicion des Ordinares.

Berr. Vncore¹ nest forsqe a la volunte des Ordiners et Patron dont solom lor assent serroit la porcion le vikere ordine.

Toud. La porcion le vikere serra todis ordine des Ordinares et sa porcion amountera a la terce porcion dil Eglise.

Scrop. Iescun aduoueson est layte et nous auoms dit qe leuesqe fut seisi dil aduoueson et dona com du dreit de sa Eglise et nemy com Ordenere.

Herle. Si la voueson dil Eglise fut demande et recouery demoreit la vikarie com apres la mort le vikere auer bref a demander la vikerie apres ceo qe vous laueret par du certes nanyl.

Berr. Laduoueson est vne Et si bref fut porte vers le Patron ele serroit demande com vne aduoueson mek il auoit vikare ou sextone fet de la voueson en porcionz Et si le Patron seit desturbe en ceo cas il auereit son derein presentement de iescun porcion.

Brab. [sic]. Le vesqe ad deuz estat scilicet estat de Patron et estat de Ordiner Et il diunt qe le vesqe dona cele vikerie com du dreit sa Eglise et nent com Ordiner.

Berr. ad idem. Ausicom put homme auer et le derein presentement et quare impedit de vikerie com de autre aduoueson Car si le vesqe desturbat le Patron presenter a vne vikerie ausi ben sureyt le quare impedit etc. vers ly com vers lay homme sil ne put assigner certaine cause par resoun de office.

Toud. Nos predecessors auant nous .iij. feyz en au tiel cas a mesme cele vikerie vnt purueu en tenps de vacacion ausi fet gardeyn

¹ Obviously a corrupt reading for *vicarie*.

presentation of an unfit person. Wherefore we are of opinion that upon this point you ought to say further etc.

Toudeby. A vicarage is only a portion of a parsonage, and by the ordinances of the Ordinaries a vicar is subject to the parson and hath cure of souls, and so a vicarage is a spirituality.

BEREFORD C.J. A vicarage cannot be made without the assent of the patron. And if the vicarage be voided the patron will have the *darrein presentement* should he be disturbed by other. Further, if an Abbot that hath a church to his own use be disturbed upon the death of the vicar he hath no remedy save in this Court.

Toudeby. There he presenteth as parson; and the portion of the vicarage is allocated by the disposition of the Ordinaries.

BEREFORD C.J. A vicarage can be constituted only by the assent of the Ordinaries and the patron. It must be, then, with their assent that the vicar's portion is assessed.

Toudeby. The vicar's portion will always be allocated by the Ordinaries, and his portion will amount to the third part of the value of the Church.

Scrope. Every advowson is lay fee; and we have said that the Bishop was seised of the advowson, and gave as of the right of his church and not as Ordinary.

Herle. If the advowson of the church were claimed and recovered, would the vicarage remain outside that recovery, as you seem to be arguing, so that upon the death of the vicar the claimant must purchase another writ to claim the vicarage? *Par Dieu*, certainly not.

BEREFORD C.J. The advowson is an undivided whole. And if a writ were brought against the patron it would be claimed as one advowson, even though a vicar and a sexton had been made and portioned out of the advowson. And should the patron in such circumstances be disturbed he will have his *darrein presentement* in respect of each portion.

BRABAZON C.J. (K.B.). The Bishop hath two estates, to wit, the estate of patron, and the estate of Ordinary; and they say that the Bishop gave this vicarage in right of his church, and not as Ordinary.

BEREFORD C.J. *ad idem.* A man may have both *darrein presentement* and *quare impedit* equally as well of a vicarage as of any other advowson; for if the Bishop disturb the patron in presenting to a vicarage, the patron has just the same right to sue the *quare impedit* etc. against him as he hath against a layman, unless the Bishop can show certain cause by reason of his office.

Toudeby. Thrice have our predecessors before us in like circumstances presented to this vicarage during the vacancy of the see [of

de esperitualitez deboraco qant le see est vacant et le Roy doune les prouendres etc.

Scrop. Le deen et le Chapitre donunt todis la vikerie ausi been en autre tenps qe en tenps de vacacion.

Berr. Il nous semble qe vikerie est chose espirituele et porcion de personage et il ad Cure de personage com des de [*sic*] almez de personage *Et dautre part* ausi esperitualitez sunt garbez com Offraundes en mayn de persone.

Herle. La voueson est vne en la Eglise et si vous vsset la vikerie vous aueret deus aduouesons dune Eglise qest inconuenient.

Pass. Ceo nest pas inconuenient.

Berr. Pur ceo qe vous ne poet dedire qe leuesqe dona la voueson de la vikerie com du dreit de sa Eglise et nule cause assignet par qi ceste collacion al Erceuesqe apent si noun qe vous dites qil se ad puruew pur ceo qe cest chose espirituel com metropolitan et Ordinare dil luw en tenps de vacacion pur ceo qe a ly apent la garde des esperitualitez ausi com au Roy des temporautez et auys est a la court qe cest laite et il ren ne cleyme en la voueson ne quident si ad il chose fet par qi il est desturbor en tant com il ad la vikerie puruew si agarde etc. le Roy eit bref al Euesqe non obstante etc.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 129d., Northumberland.

Willelmus Archiepiscopus Eboracensis summonitus fuit ad respondendum Domino Regi de placito quod permittat ipsum Dominum Regem presentare idoneam personam ad vicariam ecclesie de Nortone iuxta Bylingham que vacat et ad suam spectat donacionem ratione Episcopatus Dunelmensis nuper vacantis et in manu domini Regis existentis etc. Et vnde Willelmus de Langele qui sequitur pro domino Rege dicit quod Antonius quondam Episcopus Dunelmensis fuit seiscitus de aduocacione vicarie ecclesie predictae etc. qui ecclesiam illam contulit cuidam Iohanni de Garneburghe clerico suo qui ad collacionem suam fuit institutus etc. tempore pacis tempore domini Regis nunc etc. Et dicit quod postea sede Episcopatus vacante per mortem predicti Episcopi et in seisina ipsius domini Regis nunc existente etc. vacauit predicta vicaria per mortem predicti Iohannis etc. Et ea ratione

Durham]; and the guardian of the spiritualities of York doth in like manner when the See is vacant, and the King giveth the prebends etc.

Scope. The Dean and Chapter ever give the vicarage [of a prebend] as well when the See is vacant as at other time.

BEREFORD C.J. It seemeth to us that a vicarage is a spirituality and is a portion of the parsonage; and that the vicar hath cure of the souls of the parsonage. Even sheaves of corn that are in possession of the parson as offerings are spirituality.

Herle. There is but one advowson of a church; and if you should have one of the vicarage you would have two advowsons of one church, which is an incongruity.

Passeley. It is no incongruity.

BEREFORD C.J. Seeing that you cannot deny that the Bishop presented to the vicarage in right of his church, and that you assign no reason why this collation should appertain to the Archbishop, further than saying that he hath made provision for this, being a spirituality, during the vacancy of the See, as Metropolitan and Ordinary of the place, because the wardship of the spiritualities belongeth to him, as that of the temporalities doth to the King; and since the Court is of opinion that this is lay fee, and, though the Archbishop claimeth naught in the advowson, he hath nevertheless done that through which he hath made himself a disturber, inasmuch as he hath presented to the vicarage, the Court doth award etc. that the King have a writ to the Bishop, notwithstanding etc.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 193), r. 129 d., Northumberland.

William, Archbishop of York, was summoned to answer our lord the King of a plea that he permit our said lord the King to present a fit person to the vicarage of the church of Norton near Billingham¹ which is vacant, and is regardant to his donation, by reason of the see of Durham being lately vacant and in the King's hand etc. And, in respect of this, William of Langley that prosecuteth for our lord the King saith that Anthony that was aforetime Bishop of Durham was seised of the advowson of the vicarage of the church aforesaid etc., and that he collated that church to a certain John of Garneburghe, his clerk, who, on his collation, was instituted etc. in time of peace and in the time of our lord the King that now is etc. And he saith that the see of the Bishopric having subsequently become vacant by reason of the death of the aforesaid Bishop and being in the seisin of our lord the King that now is etc., the aforesaid vicarage became vacant by reason of the death of the aforesaid John etc. And for this reason it apper-

¹ Norton is a mile and a half north three miles N.N.E. of Stockton.
of Stockton-on-Tees, Billingham is

Note from the Record—continued.

ad ipsum dominum Regem pertinet ad predictam vicariam presentare etc. predictus Archiepiscopus ipsum dominum Regem iniuste impedit etc. Et hoc paratus est verificare pro domino Rege etc.

Et Archiepiscopus per attornatum suum venit Et super hoc veniunt Balliui libertatis Episcopi Dunelmensis etc. Et dicunt quod predictus Episcopus habet talem regiam libertatem in Episcopatu suo predicto infra aquas de Teyse et Tyne quod nullum breue regni ibidem currit etc. nisi tantum breue ipsius Episcopi coram Iusticiariis ipsius Episcopi infra libertatem suam predictam placitandum qua quidem libertate idem Episcopus et predecessores sui hactenus vsi sunt et gauisi vt de iure ecclesie sancti Cuthberti Dunelmensis etc. Et dicunt quod predicta ecclesia ad cuius vicariam etc. est infra predictam libertatem suam etc. vnde dicunt quod non intendunt quod Dominus Rex velit quod placitum inde in Curia hic deducatur in lesionem vel preiudicium libertatis sue predictae etc.

Et predictus Willelmus qui sequitur etc. dicit quod prosecutio domini Regis in hac parte per aliquam libertatem prorogari non debet etc. Dicit enim quod Dominus Rex ratione prerogatiue et iuris Corone sue a qua Corona huiusmodi libertates primo sumpserunt originem et inde dependent etc. artari non debet ad placitandum alibi quam in Curia sua coram se ipso vel Iusticiariis suis etc. Et petit Iudicium si predictus Archiepiscopus in Curia hic inde domino Regi non debeat respondere etc. Et salua eidem Episcopo Dunelmensi calumpnia libertatis sue predictae etc.

Dictum est predicto Archiepiscopo quod respondeat etc.

Et predictus Archiepiscopus defendit vim et iniuriam quando etc. Et dicit quod ipse nichil clamat in predicta vicaria tanquam patronus etc. Sed dicit quod ipse est Metropolitanus Episcopatus predicti per quod custodia et cura spiritualitatis eiusdem Episcopatus sede predicti Episcopatus vacante ad ipsum spectare debet etc. Et dicit quod ipse tempore predictae Custodie sue inuenit predictam vicariam que est quoddam mere spirituale etc. vacantem Et ea ratione vicariam illam contulit cuidam clerico suo etc. tanquam Metropolitanus etc. Et dicit quod ipse nullum alium statum clamat in vicariam predictam per quod Dominus Rex vti non debet isto breui suo versus ipsum Archiepiscopum tanquam impeditorem etc.

Et predictus Willelmus qui sequitur etc. Dicit quod predictus Antonius quondam Episcopus Dunelmensis contulit predictam vicariam tanquam aduocatus etc. Et dicit quod aduocaciones tam vicariarum quam Rectoriarum sunt Laicale etc. et non spirituale etc. quarum cognicio spectat ad Curiam laicalem etc. Et ex quo predictus Archiepiscopus cognouit tempore vacationis sedis etc. quod ipse contulit predictam vicariam cuius aduocatio est Ius patronatus Episcopatus predicti quam quidem vicariam

Note from the Record—continued.

taineth to the same our lord the King to present to the aforesaid vicarage etc., and the aforesaid Archbishop doth unjustly impede the same our lord the King etc. And this he is ready to aver on behalf of our lord the King etc.

And the Archbishop cometh by his attorney etc. And upon this come the bailiffs of the liberty of the Bishop of Durham etc. And they say that the aforesaid Archbishop hath such a royal liberty within his Bishopric aforesaid within the Tees and the Tyne that no writ of the Realm runneth therein etc., but only the writs of the Bishop himself, to be pleaded before the justices of the same Bishop within his aforesaid liberty ; which franchise the same Bishop and his predecessors have hitherto used and enjoyed as of the right of the church of St. Cuthbert of Durham etc. And they say that the aforesaid church to the vicarage of which etc. is within the aforesaid liberty of the Bishop etc., and they say thereof that they are not of opinion that our lord the King will wish¹ that any plea in respect thereof should be pleaded in court here to the detriment or prejudice of the aforesaid liberty of the Bishop etc.

And the aforesaid William that prosecuteth etc. saith that the suit of the lord King in this matter ought not to be delayed by reason of any liberty etc. For he saith that the lord King by reason of his prerogative and the right of his Crown, from which Crown liberties of this kind first had their origin and on which they are dependent, ought not to be constrained to plead elsewhere than in his own Court before himself or his Justices etc. And he asketh judgment whether the aforesaid Archbishop ought not to answer the lord King in Court here of this matter etc., the right of claiming his aforesaid liberty being reserved to the said Bishop.

The aforesaid Archbishop is told that he must answer.

And the aforesaid Archbishop denieth force and injury when etc. And he saith that he doth claim naught in the vicarage aforesaid as patron etc. But he saith that he is Metropolitan of the aforesaid Bishopric, wherefore the wardship and care of the spiritualities of the same Bishopric, while the throne of the aforesaid Bishopric is vacant, ought to be regardant to him etc. And he saith that during the time of his aforesaid wardship he found the aforesaid vicarage, that is a pure spirituality, vacant. And for that reason he, as Metropolitan, collated that vicarage upon a certain one, his clerk etc. And he saith that he claimeth no other estate in the aforesaid vicarage ; by reason of which the lord King ought not to use this writ against him, who is Archbishop, as being a disturber.

And the aforesaid William who sueth etc. saith that the aforesaid Anthony that was aforetime Bishop of Durham collated the aforesaid vicarage as advowee etc. And he saith that advowsons of vicarages as well as of rectories are lay fee etc. and not spiritual etc. ; and that jurisdiction in respect of them lieth with the lay court etc. And seeing that the aforesaid Archbishop hath admitted that, during the vacancy of the see etc., he did collate the aforesaid vicarage, the advowson of which is of the right of the patronship of

¹ Note the smooth wording of a plea against the King.

Note from the Record—*continued.*

predictus Antonius quondam Episcopus etc. cuius statum idem dominus Rex habuit in huiusmodi aduocacionibus sede vacante etc. prius contulerat tanquam aduocatus etc. sicut predictum est petit Iudicium de cognicione ipsius Archiepiscopi et breue Episcopo pro domino Rege etc.

Et Archiepiscopus dicit quod predicta vicaria est quedam porcio in predicta ecclesia de Nortone cuius quidem ecclesie est vnita aduocacio etc. quod si esset alia aduocacio porcionis predictae vicarie sic sequeretur quod essent due aduocaciones vnus et eiusdem ecclesie quod raro accidit etc. vnde dicit quod predicta vicaria est mere spirituale etc. per quod ad ipsum Archiepiscopum Metropolitanum etc. ad quem spectabat ordinacio et prouisio super huius modi spiritualitate sede vacante etc. pertinuit prouidere de vicaria illa et eam contulit etc. vt predictum est sicut et debuit etc. et sicut predecessores sui huiusmodi vicarias temporibus retroactis contulerunt etc.

Et Willelmus qui sequitur etc. dicit quod predictus Archiepiscopus itaque se excusare non potest etc. Dicit enim quod licet predictus Antonius quondam Episcopus etc. habuisset duplicem statum in Episcopatu suo etc. videlicet statum Ordinarii et statum patroni etc. pro hoc tantum idem Archiepiscopus tanquam Metropolitanus etc. sede vacante supra hiis que spectant ad patronum de vicaria magis quam de ecclesia prouidere non potuit absque certa causa etc. Et ex quo idem Willelmus qui sequitur pretendit verificare pro domino Rege quod predictus Antonius quondam Episcopus etc. contulit predictam vicariam tanquam aduocatus eiusdem qui quidem Episcopus si dum vixerat a collacione sua fuisset impeditus competiuisset ei breue ultime presentacionis vel quare impedit in casu suo versus impediendum etc. placitandum in Curia laicali vnde cum predictus Archiepiscopus nichil aliud respondet in hac parte nisi tantum quod dicit quod ipse contulit predictam vicariam vt custos spiritualitatis etc. nec pro hoc respondet accioni domini Regis seu verificacioni quam idem Dominus Rex pretendit petit Iudicium etc.

Et predictus Archiepiscopus quesitus per Iusticiarios si quid aliud velit dicere in hac parte nichil aliud dicit seu [*sic*] respondet quam prius etc.

Et quia rationibus supradictis et aliis etc. videtur Curie quod predictus Archiepiscopus nichil respondet ad excludendum Dominum Regem a presentacione sua ad ipsum dominum Regem pertinente in hac parte nec aliud pro se allegat quare non impediuit ipsum dominum Regem per collacionem suam predictam quam cognouit nisi tantum quod dicit quod vicaria illa est spirituale etc. quod non affirmat seu probat etc. Consideratum est quod Dominus Rex recuperet presentacionem suam ad predictam vicariam versus predictum Archiepiscopum etc. non obstante libertate Episcopatus etc. Et Archiepiscopus in misericordia etc. Et idem Dominus Rex habeat

Note from the Record—*continued.*

the Diocese aforesaid, which said vicarage the aforesaid Anthony, aforetime Bishop etc., whose estate in advowsons of this kind the lord King hath during a vacancy of the see, did previously collate as advowee etc., as is aforesaid, he asketh judgment upon the admission of the same Archbishop, and a writ to the Bishop on behalf of the lord King etc.

And the Archbishop saith that the aforesaid vicarage is a certain portion in the aforesaid church of Norton, the advowson of which said church is a whole etc., for if there were a separate advowson of the portion of the aforesaid vicarage it would follow that there would be two advowsons of one and the same church, that which doth seldom fall out etc. And in respect of this he saith that the aforesaid vicarage is a pure spirituality etc. Wherefore to himself, being Archbishop Metropolitan, to whom it belongeth to make order and provision for spiritualities of this sort during a vacancy of the see, it belonged to make provision for that vicarage, and he did collate it etc., as is aforesaid, as he ought etc., and as his predecessors aforetime did collate vicarages of this sort etc.

And William that sueth etc. saith that the aforesaid Archbishop cannot thus excuse himself. For he saith that though the aforesaid Anthony, aforetime Bishop etc., had a twofold estate in his Bishopric etc., to wit, the estate of Ordinary and the estate of patron etc., yet, by reason of this only and without showing some certain cause, the said Archbishop could not as Metropolitan, during a vacancy of the see, make provision for such things as be regardant to the patron of the vicarage rather than the patron of the church. And seeing that the same William that sueth doth offer to aver on behalf of the lord King that the aforesaid Anthony, aforetime Bishop etc., did collate the aforesaid vicarage as advowee of the same; to which same Bishop, if during his life he had been hindered from his collation, it would have been competent to plead his case in the lay court against the impedient either by a writ of *darrein presentement* or of *quare impedit*; and since to all this the aforesaid Archbishop now answereth naught, but saith only that he did collate the aforesaid vicarage as guardian of the spiritualities etc., by which he answereth neither the action of the lord King nor the averment which the lord King offereth, he asketh judgment etc.

And the aforesaid Archbishop, being asked by the Justices whether there were aught else he would say touching this, saith naught new, but answereth as before etc.

And because for the reasons aforesaid and for other etc., it seemeth to the Court that the aforesaid Archbishop doth make no answer that would exclude the lord King from his presentation that doth in this case accrue to the lord King; nor doth he offer any allegation that he did not impede the said lord King through his own collation, which he hath himself admitted; but he saith only that that vicarage is a spirituality etc., an allegation which he neither corroborateth nor proveth etc.; it is therefore considered that our lord the King recover his presentation to the aforesaid vicarage against the aforesaid Archbishop etc., the liberty of the Bishopric etc. notwithstanding. And the Archbishop is in mercy etc. And the same lord King is to have

Note from the Record—*continued*.

breue Episcopo Dunelmensi quod non obstante reclamacione predicti Archiepiscopi ad presentacionem domini Regis ad predictam vicariam idoneam personam admittat etc.

13. MARSTON *v.* WALRAUND.¹

Vtrum porte vers vn home et sa femme il voucherent a garantie eus meimes et stetit.

Vne persone porta iure de vtrum vers Ion Walaund et Ione sa femme et dist qe vn Robert soun predecessour fut seisi cum de fraunc almoigne de sa eglise et aliena.

Scrop. Nous vochoms a garantie Ion de Walaund et Ione sa femme.

Denum. Ceux sont mesmes les persons vers queux nous portamus le bref et ils ne pouunt vocher eux meimes si noun pur certeine cause cum si le pere Ion vst enfeffe li et sa femme Iointement ou si ceo fust le dreit la femme et vst parceners.

Scrop. Quei si le pere la femme le vst et la femme fust heir nauereint il lour vocher.

Denum. Nous dioms qe noun.

Scrop. Par la demoroms en iugement car nous vous dioms qe Ion le stat [*sic*] pere Ione dona ceux tenemenz a Ion Walaund [et a] vne Ione sa file a eux et a les heirs de lour cors engendrez et Ione est heir etc. qe ci nous ne fussoms receu² a ceu vouche Ione nauereit pas a la value et stetit vocacio.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 144, Devonshire.

Iurata venit recognitura vtrum vnus Fêrlingus terre cum pertinenciis in Suthleghe sit libera elemosina pertinens ad ecclesiam Iohannis de Mershtone persone ecclesie Omnium Sanctorum de Suthleghe aut laicum feodum Iohannis Walraund et Iohanne vxoris eius etc. Et vnde idem Iohannes de Merstone per attornatum suum dicit quod quidam Iohannes de Sulleghe quondam persona etc. predecessor etc. fuit seisitus de predicta terra vt de feodo et iure ecclesie sue predictæ tempore pacis tempore Regis Edwardi patris domini Regis nunc qui eodem tempore predictam terram alienauit etc.

¹ Reported by *R* only. Names of the parties from the Record. ² A space sufficient for about ten letters has been left blank after *receu*, but nothing relevant seems omitted.

Note from the Record—*continued*.

a writ to the Bishop of Durham that, the claim of the aforesaid Archbishop notwithstanding, he is to admit a fit person to the aforesaid vicarage upon the presentation of the lord King etc.

13. MARSTON *v.* WALRAUND.¹

Vtrum brought against a man and his wife, who vouched themselves to warranty, and the voucher stood.

A parson brought a jury of *utrum* against John Walraund and Joan his wife, and said that one Robert his predecessor was seised as of the free alms of his church and alienated.

Scrope. We vouch to warranty John of Walraund and Joan his wife.

Denham. These are the same persons against whom we brought our writ, and they cannot vouch themselves unless they show special cause, as, for example, that John's father enfeofed him and his wife jointly, or that this [land] was of the right of the wife and that she had parceners.

Scrope. What if the wife's father had it, and the wife were heir? Would they not have their voucher?

Denham. We say that they would not.

Scrope. We will abide judgment on the point, for we tell you that John of Stamford,² father of Joan, gave these tenements to John Walraund, and to Joan his daughter, to them and to the heirs born of their bodies, and Joan is heir etc.; for if we were not received to this voucher Joan would not receive to the value [of the land, should the case go against her].

And the voucher stood.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 144, Devonshire.

A jury cometh to recognise whether one furlong³ of land, together with the appurtenances, in Southleigh, be free alms belonging to the church of John of Marston, parson of the church of All Saints, of Southleigh, or the lay fee of John Walraund and Joan his wife etc. And in respect of this John of Marston saith by his attorney that a certain John of Southleigh, aforetime parson etc., predecessor etc., was seised of the aforesaid land as of fee and the right of his church aforesaid in time of peace, in the time of King Edward, father of the lord King that now is, who at that same time did alienate the aforesaid land etc.

¹ See the *Introduction*, p. xix.

³ An area of land a furlong square,

² From the Record. It is not clear what the scribe means by *le stat*. containing ten acres.

Note from the Record—*continued.*

Et Iohannes et Iohanna vxor eius dicunt quod predicta terra simul cum aliis tenementis aliquando fuerunt in seisinā cuiusdam Iohannis de Staunford qui de terra illa feoffauit ipsum Iohannem Walraund et ipsam Iohannam vxorem eius filiam eiusdem Iohannis de Staunford Habenda et Tenenda eisdem Iohanni et Iohanne et heredibus de corpore suo procreatis etc. Et obligauit se et heredes suos ad Warantizandum etc. vnde iidem Iohannes Walraund et Iohanna vxor eius vocant inde ad Warantiam in forma predicta predictos Iohannem Walraund et Iohannam filiam et heredem predicti Iohannis de Staunford etc. Habeat [*sic*] eos hic a die sancte Trinitatis in .xv. dies per auxilium Curie Et summoneantur in eodem Comitatu etc. Et preceptum est vicecomiti quod habeat corpora Iuratorum hic ad prefatum terminum etc. Postea a die sancti Martini .xv. dies anno Regis nunc sexto venit predictus Iohannes persona et Iohannes et Iohanna tenentes etc. Et similiter Iohannes et Iohanna Warrantores etc. veniunt modo per summonicionem per Iohannem Palmere attornatum suum Et Warantizant predictis Iohanni et Iohanne tenementa etc. Et datus est eis dies hic a die Pasche in tres septimanas prece parcium sine essonio Et preceptum est vicecomiti quod habeat corpora recognitorum hic ad prefatum terminum. Ad quem diem venit tam predictus Iohannes persona quam predicti Iohannes Walraund et Iohanna vxor eius tenentes per Warrantiam suam predictam et iidem Iohannes et Iohanna dicunt quod predicta terra non est libera elemosina pertinens ad ecclesiam predictam Immo laicum feodum ipsorum Iohannis Walraund et Iohanne Et de hoc ponunt se super Iuratam predictam. Et Iohannes persona similiter Ideo fiat inde Iurata set ponitur in respectu vsque a die sancti Michaelis in .xv. dies per defaultam Iuratorum quia nullus venit Ideo vicecomes habeat corpora etc.

Postea a die Pasche in vnum mensem anno regni domini Regis nunc sextodecimo apud Eboracum venit predictus Iohannes de Merstone per Iohannem de Somertone attornatum suum Et Iohannes de Stounore coram quo etc. misit veredictum predictę Iurate in hec verba Postea die Martis proximo post medium quadragesime anno regni domini Regis nunc sextodecimo apud Exoniam coram Iohanne de Stonore associato sibi Stephano de Haccumbe milite veniunt partes predictę Et similiter Iurati de consensu parcium electi qui dicunt super sacramentum suum quod predictus ferlingus terre est libera elemosina pertinens ad ecclesiam predictam vnde predictus Iohannes est persona et non Laicum feodum predictorum Iohannis Walraund et Iohanne dicunt tamen quod predictus Iohannes persona ecclesie predictę seisitus est de medietate illius ferlingi terre Et quod predicti Iohannes Walraund et Iohanna tenent inde alteram medietatem Ideo dictum est partibus quod sint coram Iusticiariis apud Eboracum ad diem in hoc recordo contentum audiendum inde iudicium suum etc. Ideo consideratum est quod predictus Iohannes persona ecclesie predictę recuperet inde seisinam suam versus predictos Iohannem Walraund et Iohannam per visum recognitorum Iurate predictę Et iidem Iohannes et Iohanna habeant de terra predictorum Iohannis Walraund et Iohanne vxoris eius filie et heredis predicti Iohannis de Stamford ad valenciam etc. Et iidem Iohannes Walraund et Iohanna vxor eius filia et heres predicti Iohannis de Stamford in misericordia etc.

Note from the Record—*continued.*

And John and Joan his wife say that the aforesaid land together with other tenements were at one time in the seisin of a certain John of Stamford who of that land enfeofed this same John Walraund and this same Joan his wife, daughter of the same John of Stamford, to have and to hold to the same John and Joan and to the heirs of Joan's body begotten etc. And he bound himself and his heirs to warrant etc. Wherefore the same John Walraund and Joan his wife vouch to warranty thereof in form aforesaid the aforesaid John Walraund and Joan, daughter and heir of the aforesaid John of Stamford etc. They are to have them here on the quindene of the Holy Trinity by aid of the Court ; and they are to be summoned in the same county. And the sheriff is charged to have here the bodies of jurors at the aforesaid term etc. Afterwards on the quindene of St. Martin in the sixth year of the King that now is cometh the aforesaid John the parson, and John and Joan, tenants etc. And likewise John and Joan, warrantors etc., do now come by summons, by John Palmer, their attorney, and they warrant to the aforesaid John and Joan the tenements etc. And a day is given to them here three weeks after Easter, by the prayer of the parties, without essoin. And the sheriff is charged to have the bodies of the recognitors here at the same term. On which day come the aforesaid John the parson and the aforesaid John Walraund and Joan his wife, tenants by their warranty aforesaid ; and the same John and Joan do say that the aforesaid land is not free alms belonging to the aforesaid church, but the lay fee of them John Walraund and Joan. And of this they do put themselves upon the jury aforesaid. And John the parson doth likewise. So a jury is to come thereof, but it is adjourned to the quindene of St. Michael for lack of jurors, for none cometh. So the Sheriff is to have their bodies etc.

Afterwards, a month from Easter in the sixteenth year of the lord King that now is, at York, the aforesaid John of Marston cometh by John of Somerton, his attorney. And John of Stonore, before whom etc., sent the verdict of the aforesaid jury in these words : Afterwards, on the Tuesday next after Mid Lent in the sixteenth year of the reign of the King that now is, at Exeter, before John of Stonore, Stephen of Haccombe, knight, being joined with him, the aforesaid parties come. As do likewise the jurors, chosen by consent of the parties, who upon their oath do say that the aforesaid furlong of land is free alms belonging to the aforesaid church of which the aforesaid John is parson, and is not the lay fee of the aforesaid John Walraund and Joan his wife. But they say that the aforesaid John, parson of the aforesaid church, is seised of a moiety of that furlong of land, and that the aforesaid John Walraund and Joan hold the other moiety thereof. So the parties are told to be before the justices at York on the day assigned in this record to hear their judgment hereof etc. So it is considered that the aforesaid John, parson of the aforesaid church, do recover his seisin against the aforesaid John Walraund and Joan by view of the recognitors of the aforesaid jury. And the same John and Joan are to have of the land of the aforesaid John Walraund and Joan his wife daughter and heir of the aforesaid John of Stamford, to the value etc. And the same John Walraund and Joan, his wife, daughter and heir of the aforesaid John of Stamford, are in mercy etc.

14. TWENGE *v.* BEAUCOL.¹I.²

Intrusioun ou cely vers qi le bref fut porte dit qil entra par iugement qe se fist sur vn mordancestor vers vn C. etc. Le cas fut qe les tenementz fuerunt lessez al pere le tenant a terme de apres qi mort vn C. entra les tenementz il porta le mordancestor et recouert par iugement.

Marmaduk de Twenk³ porta vn bref de Intrusioun vers William le fiz William Beucel⁴ et dit⁵ en son bref⁶ en les queux il nauoit entre si noun par labatement qil⁷ en ceo⁸ fit apres la mort William⁹ soun pere¹⁰ qe ceux tenementz teynt a terme de vie du leez mesme cely Marmaduk.¹¹

*Denom.*¹² Demanda la vewe¹³ et fut oste pur ceo qe ceo fust de soun abatement demesne.¹⁴

Hedone. La ou vous dites¹⁵ qe nous¹⁶ sumes entre¹⁷ par abatement¹⁸ ceo ne poez dire care nous portames vn assise de mordancestor lan du Roy .iiij^{te}. a lendemene de la Trinite dreyn passe a Euerwyik deuaunt¹⁹ sire Ion²⁰ del Iylle²¹ et ses compaignouns²² vers vne Cicille femme cesti William de mesme ceux tenements de la mort mesme cesti William nostre pere par quele assise nous recouerames et issint sumes²³ nous vncore eynz²⁴ par iugement etc. et ne mye par abatement iugement du bref.²⁵

*Scrop.*²⁶ Qe vous entrastez par abatement cum nostre bref suppose prest²⁷ etc.

¹ Reported by *B, C, D, L, M, P, Q, R, T, X* and *Y*. Names of the parties from the Record. ² Text of (I) from *C*, collated with *B, D, L, M, P, Q, T*. The headnote in *D* is: Intrusion nota qe la ouvnhome porte bref de Intrusion vers autre en supposant qil entre par abatement et lautre allege qil entra par iugement et de ceo vouche record qest encontre son bref lautre ne serra my ressu dauerrer son bref encountre le record. The note in *Q* is: Intrusion ou iugement fut allegge deuers cely qe ne fut pas partie al iugement et bene placitatur. ³ Twynge, *B*; Tewange, *L*; Twenge, *D, M, P, Q*; Thng, *T*. ⁴ Beaucel, *D*. ⁵⁻⁶ Added from *D*. ⁷⁻⁸ added from *D, P*. ⁹⁻¹⁰ Added from *D, P*. ¹⁰⁻¹¹ a qi mesme *M*. les lessa a terme de la vie lauandit William, *D*. ¹² Herle, *D*. ¹³⁻¹⁴ *D* has for this: *Scrop*. La vewe ne deuez auer par la raison qe vostre abatement demesne ne deuez estre mesconisant. *Berr*. De vostre tort demesne la vewe nest mye grantable par qi la vewe ne deuez auer. ¹⁵ supposez, *D*. ¹⁶⁻¹⁷ entrames, *D*. ¹⁸⁻²⁵ apres la mort *W*. nous vous dioms qe Lendemayn de la Trinite lan du regne le Roi qore est quarte a Euerwik si recouerames nous mesme les tenemenz deuant sire Iohan de Isse et ses compaignons par vne assise de mordancestor vers Cecillie si entrames nous par iugement de la court, *D*. ¹⁹⁻²² etc. *L*. ²⁰⁻²¹ Doille, *B, Q*; del Idle, *D*. ²³⁻²⁴ From the other texts. *C* has entre. ²⁶⁻²⁷ la ou il dit par iugement de la court par abatement prest, *D*.

14. THWING *v.* BEAUCOL.

I.

Intrusion where he against whom the writ is brought saith that he entered by a judgment given on a mortdancestor against one C. etc. The circumstances were that the tenements were leased to the father of the tenant for a term, and upon his death one C. entered the tenements. The present defendant brought the mortdancestor, and recovered by judgment.

Marmaduke of Thwing brought a writ of intrusion against William the son of William Beaucol, and he saith in his writ 'in the which he had not entry save by the abatement that he made therein after the death of William his father, who held these tenements for the term of his life by the lease of this same Marmaduke.'

Denham asked a view, but this was refused, because he had abated himself on the land.

Hedon. Though you say that we entered by abatement, you cannot maintain that, for we brought an assize of mortdancestor,¹ in the fourth year of the King, upon the morrow of the Trinity last past, at York, before Sir John de Lisle and his companions, against one Cecily, wife of this William, in respect of these same tenements, on the death of this same William our father, by which assize we recovered, and so we are now in possession by judgment etc., and not by abatement. Judgment of the writ.

Scrope. Ready etc. that you entered by abatement as our writ supposeth.

¹ See *Year Book Series*, vol. viii. p. 50.

¹ *Hedon*. A cel auerement nauendrez mye car nous vouchoms ² record qe testmoigne nostre entre par qi vous ³de auerer le contrarie par pays ne serrez ressu.⁴

Herle. Nous ne sumes pas partie a ceu iugement et ⁵le trauers ⁶de ceo⁷ qe nous tendoms⁸ vous nous donez par qi ⁹alauerement nous serroms ressu.¹⁰

Hedone. Vous supposez nostre entre par abatement etc. la dioms nous par mye iugement dount si la court put estre asserte par recorde ¹¹qe nous entrames par iugement¹² nous ne irroms ¹³mye a pays ¹⁴mes nous vouchoms recorde¹⁵ iugement si alauerement etc.

Passeley. Il couent qe lauerement seit ressu care il ¹⁶ne fut mye partie a ceu iugement ¹⁷issint qil pount le iugement reuerser par atteynte ou par certificacioun ou en autre manere par qi de auerer labatement assez suffit.

Berreford. Il escuse sa persone de labatement qant il dit qil est entre par iugement ¹⁸car lentre par iugement et labatement sunt .ij. contraries et pur ceo Robert eydez vous.¹⁹

¹ From this point *D* is no longer collatable with the other texts. It continues as below.* ² auoms, *L, M, P.* ³⁻⁴ ne deuez mye auenir de auerer le contrarie par pays, *L, M, P.* ⁵⁻⁸ trauersoms le respouns qe, *B.* ⁶⁻⁷ From *M, P.* ⁹⁻¹⁰ From *P.* *B* and *C* have etc. ¹¹⁻¹² Added from *B.* ¹³ serroms, *L, M, P.* ¹⁴⁻¹⁵ Added from *L.* ¹⁶⁻¹⁹ nest pas partie a iugement et lentre par iugement et labatement sunt .ij. contraries et pur ceo volez lauerement etc., *P.* ¹⁷⁻¹⁸ *B, L, Q* omit.

* *Hedon*. Al auerement ne deuez auenir qar nous allegoms qe nous entrames par iugement de la court le Roi le quel iugement nous voloms auerier par record par qi a nul auerement a defaire nostre record et iugement qe esta en sa force nient defait ne deuetz auenir.

Herle. Si vous voletz dire qe *W.* morust seisi en son demesne come de fee et qe vous come plus procheyn heir auez ceux tenementz recoueri par assise de mort dancestor issint qil nauoit autre estat et de ceo volom [*sic*] record ceo est vne vice a pleder et si vous voletz dire qe vous entrastes par iugement et ne my par abatement etc.

Toud. Il plede a uostre maluoys bref qe suppose qil entra par abatement la ou il tend dauerrer par record qil entra par iugement dont sil apres la mort son pere troua vn tenant de ceux tenementz vers qi il recoueri par iugement a mesme cel temps ne fist il my labatement et ceo est lei qe checun iugement en la court le Roi esta en sa force par quel iugement il entra par qi en nule manere purrez dire qil entra par abatement si vous nassignez diuersite de temps.

Pass. Il allege vn iugement qe se fist vers *Cecilie* par assent entre eux par auenture a qi nous ne poms estre partie par proces de atteinte ne de certificacioun ne en autre manere serreit ceo bone lei qe vn record a qi ieo su tout estrange me ostereit del auerement qil entra par abatement quasi diceret non.

Berr. Si enqueste se ioynsist entre vous et troue fut par enqueste qil entra par iugement et qe *W.* nauoit autre estat qe a terme de quel iugement se freit le bref abatereit.

Wescote. Il poet auer bon bref en le post a dire qil nauoit entre si noun puis le lees qil fit a *William* a terme de sa vie qar ceo ne freit mye degree par qi encontre le record ne purriez auerier qil entra par abatement.

Et postea querens petiit licenciam querendi melius breue et habuit.

¹ *Hedon*. To that averment you will not get, for we vouch a record that witnesseth our entry, and therefore you will not be received to aver the opposite by a jury.

Herle. We are no party to that judgment, and you traverse our allegations, therefore we shall be received to the averment.

Hedon. You suppose that our entry was by abatement etc. We tell you that it was by judgment. If, then, the Court can be certified by the record that we entered by judgment, we shall not have to go to a jury. We vouch the record. Judgment whether to the averment etc.

Passeley. The averment ought to be received, for the plaintiff was no party to that judgment, so that he might reverse the judgment by attainr or certification or in any other manner; which is sufficient reason for our averring abatement.

BEREFORD C.J. He is denying abatement in himself when he saith that he entered by judgment, for entry by judgment and abatement are two inconsistent things; and so, Robert,² say what you can for yourself.

¹ See note on the opposite page.

² *Sc.* Robert Hedon.

* *Hedon*. You ought not to get to the averment, for we allege that we entered by judgment of the King's Court, the which judgment we will aver by record. Wherefore you ought not to get to any averment in defeat of our record and of a judgment that is still effective and has not been reversed.

Herle. If you want to say that W. died seised in his own demesne as of fee, and that you, as his next heir, have recovered these tenements by assise of mortdancestor, so that William Beaulcol hath no other estate in them, and you vouch the record as to that, that is one way of pleading. If you want to say that you entered by judgment and not by abatement, that is another way.

Toudeby. He is pleading to your bad writ which supposeth that he entered by abatement, whereas he offereth to aver by the record that he entered by judgment; for if after the death of his father he found a tenant [in possession] of those tenements and recovered against him by judgment, he did not at that same time make abatement. And this is law, that every judgment in the King's Court maintains its force. By such

judgment he entered; and therefore you cannot in any way say that he entered by abatement, unless you assign some other date for his entry.

Passeley. He allegeth a judgment that was given against Cecily, it may be by arrangement between them, to which we cannot be party by process of attainr or certification or in any other manner. Would it be good law that a record to which I am wholly a stranger should oust me from the averment that he entered by abatement?—*inferring that it would not be*.

BEREFORD C.J. If inquest be joined between you, and it be found by the inquest that he entered by judgment, and that W. had no estate beyond a term, judgment would be given upon that that the writ abate.

Westcote. He could have a good writ in the *post*, saying that he had not entry, save after the lease which he made to William for the term of his life, for that doth not make a degree; and consequently you cannot aver against the record that he entered by abatement.

And afterwards the complainant prayed licence to seek a better writ and had it.

Hedon. Nous sumes eynz par iugement et nent par abatement iugement du bref.

Toudeby. Le bref est maleuys care il dit qil entra par abatement apres la mort William etc.¹ La dit il qe nent par abatement eynz par iugement qe se fist vers Cecile et en tant suppose il qe Cecile entra par abatement apres la mort William et ²nent il³ ou⁴ il put auer bon bref a dire En les queux il nad entre si noun par Cecile qe se abatit apres la mort William qe ceux tenementz teynt a terme de vie iugement du bref.

Herle. Si ieo vous disseise et vn autre moy disseise vers qi ieo recouere⁵ ceo recouerer nest pas preiudicial a vous qe vous ne poez recouerer ⁶par assise⁷ deuers moy⁸ ne par ceu iugement ne pus ieo moun tort escuser auxi par de ca.

Berr. Non est simile care en vostre cas si sunt les acciouns de diuers tens ⁹et lez entrez de diuers tens¹⁰ mes en ceu cas yci lentre ¹¹est tut dun tens del abatement et du iugement.¹²

Scrop. Put estre qe primes ¹³se abaty¹⁴ et pus recouery par qi assez suffit dauerer labatement.

Hedone. Dites ceo la et nous respoundroms tost.

Herle. Si vostre pere disseise moun pere et ie port bref dentre deuers vous ceo nest pas respouns a vous a dire qe vous entrastez par successioun ¹⁵ou par iugement¹⁶ etc. sanz respoudre a la disseisine auxi par de ca nest pas respouns a dire qe vous entrastez par successioun ou par iugement a qi nous ne sumes nent partie ¹⁷sanz respoudre¹⁸ alabatement.

Wescot. Le bref nest pas meyn tenable en le per car il dit qil est entre par iugement qe ne fet mye degree ¹⁹vers queu iugement nous ne poms mye²⁰ auerement vser a defere vn recorde qil allegge par qi ²¹le bref²² gist en le post a dire en les queux il nad entre si noun puy le lees qil mesme fist a William a terme de vie iugement.

Berr. Il yad diuerse manere a pleder vne pur escuser sa persone a dire qil est entre par iugement et ne mye par abatement vne autre ²³a dire qe cely William qe nauoit qe a terme de vie com il suppose qe il auoit fee com troue est par assise cest vn autre chose²⁴ etc. par

¹ *M* adds et non pa [sic] il. ²⁻³ noun pas il la, *L*, *M*, *P*. ⁴ *T* omits.
⁵ *L*, *M* add autre foiz. ⁶⁻⁷ *L*, *M* omit. ⁷⁻⁸ *B* omits. ⁹⁻¹⁰ *B* omits.
¹¹⁻¹² qil suppose par abatement et lentre par iugement sunt tout dun temps et daltre part en vostre cas vostre recouerer nest pas trauers a son recouerer mes en ceo cas le recouerer qil allegge par assise de mordancestor par la qil il suppose qe William son pere morust seisi en son demesne com de fee est purement trauers a vostre bref de Intrusioun et a ceo qe vous biez recouerer, *L*, *M*, *P*.
¹³⁻¹⁴ il sabatist, *B*. ¹⁵⁻¹⁶ added from *M*. ¹⁷⁻¹⁸ par qi respounetz, *B*.
¹⁹⁻²⁰ encontre qil iugement vous ne poetz, *L*, *M*, *Q*. ²¹⁻²² from *L*, *M*, *Q*.
²³⁻²⁴ Added from *L*, *M*, *P*, *T*, which vary slightly. *C* has cest.

Hedon. We are in possession by judgment and not by abatement. Judgment of the writ.

Toudeby. The writ is bad, for it saith that he entered by abatement after the death of William. But the defendant saith that it was not by abatement that he entered, but by a judgment that was given against Cecily, which is tantamount to saying that it was Cecily who entered by abatement after the death of William, and not he himself. And in these circumstances the plaintiff might have had a good writ running 'in the which he had not entry save by Cecily that abated herself after the death of William who held those tenements for the term of his life.' Judgment of the writ.

Herle. If I disseise you and another disseise me, against whom I recover, this recovery will not be to your prejudice so that you cannot recover by assize against me ; nor can I by the judgment I have obtained exculpate myself of my tort [against you]. So in this case.

BEREFORD C.J. The cases are not similar. In the case you suppose the actions are of different dates, and the entries are of different dates, while here, in the present case, the entry is of one time with the abatement and the judgment.

Scrope. It may be that he first abated and then recovered, in which case it would be sufficient to aver the abatement.

Hedon. Say that, and we will answer you quickly enough.

Herle. If your father disseise my father, and I bring a writ of entry against you, it is no answer for you to say that you entered by succession or by judgment etc., without making any answer as to the disseisin. So here it is no answer to say that you entered by succession or by a judgment to which we are not party, without answering to the abatement.

Westcote. The writ is not maintainable in the *per*, for he saith that he hath entered by judgment, which doth not make a degree, and, in respect of that judgment, we cannot by averment defeat a record upon which he relies ; consequently he should have brought his writ in the *post*, saying 'in the which he hath not entry save after the lease which he made to William for the term of his life.' Judgment.

BEREFORD C.J. There are divers ways of pleading. One way is to exculpate himself personally by saying that he entered by judgment and not by abatement. Another way is to say that this William had naught but a life term and not a fee simple, as he himself allegeth was found by the assize. This is another way etc., by which he is pleading

qi il ne plede mye mes¹ pur escuser sa persoun car ie pose qe Lenqeste se ioynt le quel il sabaterist ou noun qe vynt et dit qe il entra par iugement auxi cum il dit queu iugement auereit il quasi diceret qil ne prist ²rien par son bref.³ Car nous nenquerröms mye si il auoit estat a terme de vie ou ne mye pur ceo qe la chose est troue par verdit de assise.

Scrop. Il est a trauers de nostre bref ⁴par qi nous le volöms meintenir qil se abatist prest etc.⁵

⁶*Berr.* Attendez vos iugements.⁷

II.⁸

Intrusioun ou le tenant dist qil entra par iugement.

Marmaduke de twynge porta soun bref de Intrusion vers William le fitz W. Beaucol et demanda vn mes etc. en le quel il naueit entre si noun par abatement qil fist apres la mort W. Beaucol qe cel mes tient a terme de vie de soun lees.

Hdon. La ou il dist qil nad entre si noun par abatement etc. nous vous diöms qe la quinseme de la trinite lan quatre deuant sire Jon de Hulle et ces compaignons a Ebor porta vne assise de mordancestor vers vne Cicile de la mort William soun pere et recoueri cel mes par iugement de la court ensi entramus par iugement et demandöms iugement du bref.

Scrop. Vostre resoun mounte a taunt qe vous nentrates mie par abatement et nous volöms auerer nostre bref.

Hdon. Alauerement du pays ne auenderez mie encontre le record qe nous allegöms.

Hle. Nous ne sumes pas partie a cel record par quei nous ne pomus conustre ne desdire.

Toud. Si apres la mort moun auncestre vn estrange se abatist et ieo portase le mordancestor et recouerai mesmes les tenementz par iugement serreit ceo reson si vous portasset vers moy bref de Intrusion et deisset qe ieo abati etc. qe ieo respoundi alabatement de pus qe ieo voille auerer par record lentre par iugement sanz ceo qe vous ne assignet autre tenps.

Hle. Si vous pernez vostre excepcion nous volöms auerer nostre bref si alautre nous plederöms a ceo.

Berr. Son respons nest si noun de escuser le tort qe vous li surmetez

¹ Added from *L*, *M*, *Q*. ²⁻³ From *L*, *M*, *P*. *C* has etc. ⁴⁻⁵ Supplied from *L*, *M*, *P*, *Q*, *T*. ⁶⁻⁷ *M* omits. ⁸ Text of (II) from *R*.

only in exculpation of himself personally. For suppose that an inquest was joined upon the question whether he did or did not abate, and that it came and said that he entered by judgment as he saith; what judgment would he get?—*inferring that he would take naught by his writ.* For we shall not inquire whether he had or had not an estate for life, for that was found by the verdict of the assize.

Scrope. He has traversed our writ, wherefore we will maintain that he did abate. Ready etc.

BEREFORD C.J. Abide your judgments.

II.

Intrusion, where the tenant said that he entered by judgment.

Marmaduke of Thwing brought his writ of Intrusion against William the son of William Beaucol and claimed a messuage etc., ‘in the which he had no entry save by the abatement which he made after the death of William Beaucol who held this messuage by his lease [*i.e.* Marmaduke’s] for the term of his life.’

Hedon. Whereas he saith that William had no entry save by abatement etc., we tell you that, in the quindenens of the Trinity in the fourth year, William brought a mortdancestor before Sir John de Lisle and his companions at York against one Cecily on the death of William, his father, and recovered this messuage by judgment of the Court. Consequently we entered by judgment, and we ask judgment of the writ.

Scrope. Your argument amounts merely to saying that you did not enter by abatement, and we will aver our writ.

Hedon. You will not get to an averment by a jury against the record which we allege.

Herle. We are not privy to this record, and so we can neither admit it nor deny it.

Toudeby. If, upon the death of my ancestor, a stranger abated himself, and I brought the mortdancestor and recovered the same tenements by judgment, and then you brought a writ of Intrusion against me and said that I had abated etc., it would be a good reply to the allegation of abatement if I said that I will aver by the record that I entered by judgment, unless you assigned some other date.

Herle. If you take your exception we shall aver our writ; if you rely upon your other defence, we shall plead to it.

BEREFORD C.J. His answer goes only to exculpate himself of the

qe la ou vous dites qil entra par abatement il dist qe noun car il entra par iugement et par vn recouerir qe ceo fist vers Cecile.

Frisk. Le Iugement qil tendunt de auer ne proué pas en li mesmes le reuers de nostre bref purra ensemble estre qil entra par iugement et qil entra par abatement etc.

Berr. Ceo ne put il fere de entrer par iugement et par abatement en vn meime tens si celi fust tenant vers qil le recouerir se fist.

Hle. Sire si ieo sei disseisi de certeinz tenementz et ieo le disseise pus et il porte lassise et recouere par iugement de la court et pus ieo porte lassise vers li cel recouerer ne mei forbarra mie de lassise nent plus par de sa.

Berr. Ceo est en diuers tenps et outre il vous couient dire qe vous fustes disseisi auant ceo ou apres mes il ne parlont qe de vn tenps sauuer qe apres la mort moun auncestre vn estrange se abate Ieo porte le mordancestor mes si vn home disseise vn autre et pus il li disseise il porte lassise et recouere par iugement de la court pus il porte lassise de la primere disseisine il nauendra mie alassise saunz alegger autre tenps auxi par de sa.

Hle. Nest pas semblable qe en soun cas si est il partie et en lautre ne mie.

Berr. Ieo pose qe lauerement qe vous tendet fust receu de la court et lenqueste dist qe William Beaucol nauoit rien en les tenementz qe terme de vie cum vous supposet par vostre bref et qe apres la mort William le fitz William Beaucol porta le mordancestor vers Cecile etc. quel iugement freit la court en ceo cas.

Hle. Bon iugement.

Berr. Et si il voderunt dire la verite du fet et priassent eide de la court qi les chaseient [*sic.*] outre quasi diceret nullus.

Westcote. Ceo bref ne les put seruir en le cas qil entra par iugement il ne entra mie par abatement en vne meime tenps et vous ne donez autre tens.

Hle. Ieo nay mester de assigner autre tenps de puis qe ceo qil dist purra ensemble ester oue ceo qe ieo tenk dauerer et nous ne pomus

tort which you attribute to him; for you say that he entered by abatement, while he saith that he did not, for, [he saith,] he entered by judgment and by recovery which he got against Cecily.

Friskenev. The judgment which they offer to aver does not in itself disprove the allegations of our writ. It may be that he both entered by judgment and that he entered by abatement etc.

BEREFORD C.J. He could not enter by judgment and by abatement at the same time, if it were against the tenant that the recovery were had.

Herle. Sir, if I be disseised of certain tenements and I, later, disseise my disseisor, and he bring the assize and recover by judgment of the Court, and I afterwards bring the assize against him, that recovery of his will not bar me from the assize. No more here.

BEREFORD C.J. You are supposing facts which must have happened at different times; and further, you would have to say that you had been disseised before or after such an event. But here only one time is in question, to wit, that upon the death of my ancestor a stranger abateth himself, and I [thereupon] bring the mortdancestor; but if one man disseise another, and then the disseisee disseise the disseisor, and the latter bring an assize and recover by judgment of the court, and then the former bring an assize of the first disseisin, he will not get his assize unless he shew that this disseisin was of a different date from that of the other. So here.

Herle. The cases are not similar, for in the case supposed he is privy to the judgment and here he is not.

BEREFORD C.J. Suppose that the averment which you offer were received by the Court, and that the inquest said that William Beaucol had naught in the tenements save for the term of his life, as you allege in your writ, and that, after the death of William, the son of William Beaucol brought the mortdancestor against Cecily etc. What judgment could the Court give in those circumstances?

Herle. A good judgment.

BEREFORD C.J. And if the inquest desired to return a special verdict as to the facts, and prayed aid of the Court,¹ who would force them to say more?—*inferring that no one would.*

Westcote. They cannot use this writ where the defendant entered by judgment, for he could not enter by abatement at the same time, and you do not assign a different time.

Herle. I have no need to assign other time, since what he saith can be consistent with what I propose to aver; and we cannot be

¹ *I.e.* left the Court to interpret the legal effect of these facts.

estre partie cel record etc. et dautrepart quel bref doret vous nous en ceo cas.

Toud. Vous aueret vn bref pus le les ad terminum qui preteriit.

Berr. Il vous ad done bref en le cas qil vous doune apres soun recouerer par bref de mordancestor etc.

Hle. Dount mettret vous nous en meschief kar la purrunt il vocer et aueront la vouwe et desicum nous voloms auerer labatement iugement.

Toud. Ceo nest pas meschief qe vous eiet ceo qe lei vous doune.

Berr. Conussez le recouerer ou dedites le ou nous le tendroms grante car chescun recouerer qest allegge par iugement etc. purge le tort qest surmis en la persone celi qe ad recoueri seit ceo en bref de nouel disseisine si le demandant ne puet autre temps assigner.

Hle. Nous ne pomus grantier einz voloms auerer etc.

Hedon. De pus qil ne pount desdire qe nous nentrames par iugement de la court demandoms iugement du bref.

III.¹

Marmaduk de Twenge porta sun bref de Intrusion vers William le fiz William de Beaucol de vn mees en N. et dist qil noust pas entre si noun par le abatement qil fist apres la mort William de Beaucol qe ceo mees tient de lui a terme de sa vie.

Hedoun defendi et demanda la vewe.

Scrope. Ceo est vostre tort demesne ergo etc.

Herle. Vous ne poez nent vouchier etc.

Hedoun. A la commune lei la vewe fust grauntable lestatut nous ne tout mie.

Bereford. En qi temps fust la vewe grante en bref dentrusion en le temps le Antecrist vnkes en nul temps fust il grante.

Hedoun defendit et dit qe William vers qi cestui bref est porte porta vne assise de mortdancestor vers Cecile qe fut femme William de Beaucol de ceu mees deuant Sire Iohan del Isle et ses compaignons

¹ Text of (III) from Y.

party to that record etc. And, besides all this, what writ will you give us in these circumstances ?

Toudeby. You can have a writ, after the expiration of the lease, *ad terminum qui preterit*.

BEREFORD C.J. He hath given you a writ proper in the circumstances of what he saith is his case, that is, after his recovery by writ of mortdancestor etc.

Herle. Then you are putting us into a position of hardship, for under the writ they suggest they would be able to vouch and they would have their voucher, and, since we desire to aver abatement, we ask you for judgment.

Toudeby. It is no hardship to have what the law giveth you.

BEREFORD C.J. Admit the recovery or deny it, or we shall take it as admitted, for every recovery that is had by judgment etc. purgeth the tort alleged in the person of him that hath recovered, if such judgment be given under a writ of novel disseisin, unless the demandant can assign a different time.

Herle. We cannot admit the recovery, but we will aver etc.

Hedon. Seeing that they cannot deny that we entered by judgment of the Court we ask judgment of the writ.

III.

Marmaduke of Thwing brought a writ of Intrusion against William the son of William of Beaucol in respect of a messuage in N., and said 'in the which he had not entry save by the abatement which he made after the death of William of Beaucol who held this messuage of him [*sc.* Marmaduke] for the term of his life.'

Hedon defended and claimed view.

Scrope. This is your own tort, therefore etc.

Herle. You cannot vouch [the statute¹] etc.

Hedon. The view was grantable by the common law, and the statute doth not deprive us of it.

BEREFORD C.J. At what time was the view granted in a writ of intrusion ? In the time of the Antichrist ? Never at any time was it granted.

Hedon defended and said that William, against whom this writ is brought, brought an assize of mortdancestor against Cecily that was wife of William of Beaucol in respect of this messuage before Sir John de

¹ Statute of Westminster II, cap. terre (of uncertain date), *Statutes of the* xlviii.; and see the *Statutum de visu Realm*, I, p. 218.

leindemein de la Trinite drein a Euerwyk et troue fust par verdit de assise qe William sun pere qi heir etc. morust seisi en son demesne com de fee et par iugement recouera sa seisine vers Cecile qe fu femme William de Beaucol et demandoms iugement si cieü bref vers nous puisse vser saunz moustrer title etc. et si il voet dedire nous vouchoms record.

Scrope. Nous voloms auerer nostre bref et a cel recouerir nous ne sumes mie partie iugement sil nous barrer etc.

Touth. Ieo pose qe mon pere deiue seisi des tenemenz et apres sun deces Ieo troeue vn estrange en la tenance Ieo rescouere vers lui par le mortdancestre si vous portez vostre bref de entrusion en supposant qe mon pere ne oust qe fraunc tenement ne serra mie ceo rescouerir barrer a uostre accion.

Pass. Si le rescouerir se feist vers le demandant ou ses auncestres vous deissez bien car *res inter alios acta* etc.

Touth. Assez me suffit mon rescouerir vers tenant des tenementz.

Pass. Donez bon bref al demandant.

Touth. En le quel il nad entre si noun par Cecile etc. qe sambattit etc.

Htep. Ceo est faus sil entra par iugement etc. vers Cecile il nentra mie par Cecile.

Herle. Ieo disseise *Touth.* et pus il me disseise Ieo porte lassise vers lui et rescouere par iugement et pus il vse lassise vers moy ceo nest pas resoun a moy a barrer lui de lassise a dire qe Ieo rescouery par iugement vers vous meismes ergo de ceste parte.

Bereford. Vous dites verite qar la cause de ceo est pur ceo qe vous feistes vous meismes vostre iuge ou vous poez auer vostre rescouerir par assise. Et vncore vostre semblance ne se lie nent qar en vostre cas il lui sunt diuers temps mes en le cas qil vous mettent il ny ad qe vn temps entre lentrusion et le mortdancestre.

Bereford. Ieo vous prie qe vous me respoignez a vne respounse sil fuissent ore a trauers a vous sur lentrusion et lenqueste veneit et deit qe William rescouera par iugement com il dist ore qe from nous.

Herle. ¹Quoi freiom nous² a charger lenqueste sur le pleder.

Ber. Ieo nel feise iammes ne nule bone Iustice ne freit.

¹⁻² These words seem meaningless here, and are probably a mere repetition, through the copyist's mistake, of the last words in the preceding speech.

Lisle and his companions at York on the morrow of the Trinity last past, and it was found by verdict of assize that William his father, whose heir etc., died seised in his own demesne as of fee, and he recovered his seisin by judgment against Cecily that was wife of William of Beaucol; and we ask judgment whether the plaintiff can use this writ against us unless he show title etc.; and, if he will contradict us, we vouch the record.

Scrope. We will aver our writ; and we are not party to that recovery. Judgment whether it can bar us etc.

Toudeby. I put the case that my father died seised of tenements, and that after his death I find a stranger holding them, and I recover them from him by a writ of mortdancestor. If you bring a writ of intrusion, alleging that my father had a freehold only, will not that recovery be a bar to your action?

Passeley. What you say would be true if the recovery had been gotten against the demandant or his ancestors, but *res inter alios acta* etc.

Toudeby. My recovery gotten against the tenant of the tenements is sufficient for me.

Passeley. Give the demandant a good writ.

Toudeby. 'In the which he had not entry save by Cecily etc., who abated herself etc.'

Hartlepool. That would not be true. If he entered by judgment etc. against Cecily, he did not enter by Cecily.

Herle. I disseise *Toudeby* and then he disseises me. I bring the assize against him and recover by judgment; and then he uses the assize against me. For me to say that I myself have recovered by judgment against you is no good reason on my part to bar him from the assize. Therefore it is not here.

BEREFORD C.J. You say sooth, and that because you had made yourself your own judge in circumstances where you might have had your recovery by assize. But the similarity you suggest faileth for yet another reason. The case you propose is concerned with divers times, but in the case they bring against you there is but one time, that between the intrusion and the mortdancestor.

BEREFORD C.J. I pray you answer me this. If they were now traversing you in respect of the intrusion, and the inquest came and said that William recovered by judgment as he saith he did, what should we do?

Herle. Charge the inquest on the pleadings.

BEREFORD C.J. I should never do that, nor would any competent Justice do it.¹

¹ Because it would be leaving a question of pure law to the jury.

Bere. Vous lor surmettez vn tort et en escusant lor tort il vous dyont qil ont rescouere ces tenementz par agarde etc. a qi mestier vous est a respoudre.

Hedoun. Nous rescouerames par iugement etc. iugement de cesti bref.

Herle. Qe vous entrastes par abatement prest etc.

Denom. Il ne pount iammes ester ensemble qe William morust seisi en son demeine com de fee et qe le fiz entra par abatement.

Herle. Pledez a cel coster et nous pledrom oue vous.

Touth. Sil plede a cel coster il serra en le cas *res inter alios acta etc.*

Bereford. Vous dites verite.

Hed. Nous demandoms iugement du. bref desicom il ne pount dedire nostre rescouerir qe esta vncore etc.

Herle. Qe vous abatistes prest etc.

Scrope. Nous ne poms estre partie a defere ceu iugement par nule veie de ley iugement si tieu rescouerir nous deiue barrer etc.

Herle. Si vous volez abatre cesti bref donez donqe bon bref.

Touth. Ieo vous dorra bon bref pus le lees etc. qar auxibien auerez le post par defaute de degreez com hors de degreez.

Ber. Auxicom ieo vous diseie auant hier il dient qe il on rescouery par assise de Mort de auncestre pus la trinite.

Herle. vt supra Ieo face vne disseisine et pus Ieo sui disseisi et rescouere cel rescouerir ne barre mie etc.

Bereford. Il vous mettront vne temps et vostre respouns suppose diuers temps etc.

Herle. Ieo pose qe mon pere soit disseisi et le disseisour deuie seisi et apres sun deces vn estraunge sambatit en ces tenemenz leir le disseisour porte le Mordancestre et rescouere si Ieo porte mon bref dentre vers leir ceo ne serra mie respouns a lui a dire qil rescoueri par iugement auxi par de cea.

Bereford. Ceo nest pas auxi qar cestui bref suppose qe le tenant duist auer abatu etc. Mes il dist qil rescoueri vers Cecile qe fu femme William etc. Et estre ceo vostre respounse suppose autri tort qe le tort le tenant car si vous moustrisez abatement apres le rescouerir homme vous orreit mes

*Bereford.*¹ Ieo vous dis vne parole si homme rescouere par iugement en la Court le Roi touz les tortz qil eit fet en le meen temps sicom abatement ou disseisine si sunt purgez par cel rescouerir.

¹ The repetition here of the Chief Justice's name seems superfluous, and is probably only to emphasise the authority of the *dictum* following.

BEREFORD C.J. You allege a tort against them; and they, to clear themselves of that alleged tort, tell you that they recovered these tenements by judgment etc. And to that you must reply.

Hedon. We recovered by judgment etc. Judgment of this writ.

Herle. That you entered by abatement, ready etc.

Denham. That William died seised in his own demesne as of fee and that his son entered by abatement can never be compatible.

Herle. Plead to that effect, and we will plead against you.

Toudeby. If he plead to that effect he will come under *res inter alios acta* etc.

BEREFORD C.J. You say sooth.

Hedon. We ask judgment of the writ since he cannot deny our recovery which is still of force etc.

Herle. That you abated, ready etc.

Scrope. We cannot, by any method of law, be a partly to procuring the avoidance of this judgment. Judgment whether such recovery ought to bar us etc.

Herle. If you would abate this writ, give a good writ.

Toudeby. I will give you a good writ, 'after the lease etc.'; for you may have a writ in the *post* just as well in default of degrees as out of degrees.¹

BEREFORD C.J. As I told you the day before yesterday, they say that they have recovered by assize of mortdancestor since Trinity Sunday.

Herle, as before. I disseise a man and afterwards am disseised, and I recover. This recovery is no bar etc.

BEREFORD C.J. Their case deals with one time; your answer supposeth divers times etc.

Herle. I put the case that my father be disseised and that the disseisor die seised; and that after his death a stranger abate himself in these tenements. The heir of the disseisor bringeth the mortdancestor and recovereth. If I bring my writ of entry against the heir, it will be no answer on his part to say that he recovered by judgment. So here.

BEREFORD C.J. It is not so here, for this writ supposeth the tenant to have abated etc. But he saith that he recovered against Cecily that was wife of William etc. And, further than that, your answer supposeth tort on the part of other than the tenant. If you can show abatement after the recovery you will be listened to, but ² I tell you this, that if a man recover by judgment in the King's Court all the torts which he may have committed up to then, such as abatement or disseisin, are purged by that recovery.

¹ See Coke's *Inst.* I, sect. 336.

² See the note on the opposite page.

Herle. Si nous portoms nostre bref en le post il nous allegeront mesme tiele excepcion.

Bereford. Volez vous pleder vostre bref auant la mayn etc. Sachez qe au bref qil vous donnent il ne pount nent alleger etc.

Et breue cassata fuit etc.

IV.¹

Intrusion.

Marmaduke de Tweng porta bref de Intrusion vers William fitz William de Beuceley supposant son entre par abatement apres la mort lauandit William son pere.

Herl. La ou il dit qe nous entrames par abatement ceo ne peut il dire qar nous portames bref vers Cecillie qe fu la femme le dit William de la mort mesme celi William nostre pere et recouerames issint sumes enz par iugement iugement du bref.

Scrop. Vous entrastes par abatement prest etc.

Herl. A ceo nauendrez pas contre le record estre ceo cecillie entra par abatement si abatement i fut ou vous puriez auer en bon bref suppose un entre pus labatement qe Cecillie fist.

Scrop. Il peut estre qe vous abatissez et pus recouerissez et al record qe vous aleggez sumes estrange.

Herl. Si nous abatissoms en altre tens pledez ceo.

Berr. Il iad diuers plez ou alentre ou a prouer qe William aueit fe.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 148d., Yorkshire.

Marmaducus de Twenge per Iohannem de Kendale attornatum suum petit versus Willelmum filium Willelmi Beacol vnum messuagium cum pertinenciis in Lund in quod idem Willelmus non habet ingressum nisi per intrusionem quam in illud fecit post mortem Willelmi Beacol cui predictus Marmaducus illud dimisit ad vitam ipsius Willelmi Beacol etc. Et vnde idem Marmaducus dicit quod ipsemet fuit seisisus in dominico suo vt de feodo et iure tempore pacis tempore domini Edwardi Regis patris domini Regis nunc capiendū inde explecias ad valenciam etc. Et in quod etc. Et inde producit sectam etc.

¹ Text of (IV) from X.

Herle. If we were to bring our writ in the *post*, they would take the same exception against us.

BEREFORD C.J. Do you wish to proceed with your writ straight-way? I tell you against the writ they give you they cannot allege etc. And the writ was quashed etc.

IV.

Intrusion.

Marmaduke of Thwing brought a writ of Intrusion against William, son of William of Beaucol, alleging that he entered by abatement after the death of the aforesaid William, his father.

Herle. Whereas he saith that we entered by abatement, [we say] that he cannot say that, for we brought a writ upon the death of that same William our father against Cecily that was wife of the said William, and we recovered; so that we are in possession by judgment. Judgment of the writ.

Scrope. You entered by abatement. Ready etc.

Herle. You will not get to that in the teeth of the record. Besides, it was Cecily that entered by abatement, if any abatement there were; and in those circumstances you could have had a good writ alleging an entry after the abatement which Cecily made.

Scrope. It may be that you abated and recovered afterwards; and we are not privy to the record which you allege.

Herle. If you are suggesting that we abated at some other time, plead that.

BEREFORD C.J. There are divers pleas open, either to the entry or to show that William had the fee.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 148d., Yorkshire.

Marmaduke of Thwing, by John of Kendal, his attorney, claimeth from William the son of William Beaucol a messuage together with the appurtenances in Lund,¹ into which the same William hath not entry save by the intrusion which he made therein after the death of William Beaucol, to whom the aforesaid Marmaduke leased it for the term of the life of the same William Beaucol etc. And the same Marmaduke saith that he himself was seised thereof in his demesne as of fee and right in time of peace in the time of our lord Edward the King, father of our lord the King that now is, taking esplees therefrom to the value etc. And into which etc. And thereof he produceth suit etc.

¹ Lund is 7½ miles N.W. of Beverley.

Note from the Record—continued.

Et Willelmus per Thomam de Burtone attornatum suum venit Et dicit quod non debet ei inde ad hoc breue respondere dicit enim quod ipse alias scilicet die Lune in Crastino sancte Trinitatis proximo preterito coram Iohanne de Insula et sociis suis Iusticiariis ad assisas in Comitatu predicto capiendas assignatis arramiauit quandam assisam mortis antecessoris de mortepredicti Willelmi patris etc. versus quandam Ceciliam que fuit vxor Willelmi de Beucol de predicto messuagio et illud per iudicium eiusdem Curie recuperauit et sic intrauit in messuagio illo per iudicium predictum et non per intrusionem etc. Et hoc paratus est verificare per recordum predictum unde petit iudicium etc. Dies datus est eis hic a die sancte Trinitatis in xv. dies in eodem statu quo nunc prece petentis saluis partibus rationibus etc. Postea ad diem illum venerunt partes predictae per attornatos suos. Et dies datus est eis hic in Crastino sancti Martini in eodem statu quo nunc saluis partibus inde rationibus suis etc.¹

15. GLOVER *v.* THE ABBOT OF SHREWSBURY.²I.³

Aleyn le Glouer de Saloup se plaint del abbe de Saloup qe atort prist ces auers scilicet .iiij. boefs etc. en vn certain lieu qest appelle Porteman Islese etc.

Hle. Labbe par son attorne vous dit qe la prise fuit fete en C. et auowe la prise bone et droiturele par la resoun qil troua ses bestes en son seueral damage fesant et issi etc.

Pass. A meintenir nostre plainte nous dioms qe la place ou la prise fuit fete si est conu par lun noun et par lautre Et hoc concessit vtraque pars et vous dioms qe ceo est vn commun en quel touz les Burgeis et resceianz de la ville de Saloup communent oue touz lour bestes en chescon seison del an.

Hle. Ou clamez vous ceo com commun appendant ou com grosse par especialte.

Pass. Nous tenoms diuers mees en la ville de S. et dioms qe touz iceux qe ceu mees tiendront ont eu commune du temps dont memore ne curt et prest etc.

Herle. Donqe clamez vous com apendant.

Ber. Issi entendoms nous par de cea.

Hle. enparla et reuint et dit vous auez bien entendu coment il clame ceste commune com apendant.

Pass. Nous clamons com vn reseant en la ville de S.

¹ Nothing further has been recorded.

² Reported by *D* and *Y*.

³ Text of (I) from *Y*.

Note from the Record—continued.

And William cometh by Thomas of Burton, his attorney, and he saith that he ought not to answer thereof to this writ, for he saith that he himself at another time, to wit, on the Monday that was the morrow of the Holy Trinity last past, before John de Lisle and his companions, being Justices assigned to take assizes in the county aforesaid, arraigned a certain assize of mortdancestor of the death of the aforesaid William, father etc., against a certain Cecily that was wife of William of Beaucol in respect of the aforesaid messuage, and did recover it by the judgment of the same Court, and so he did enter into that messuage by the judgment aforesaid and not by intrusion etc. And this he is ready to aver by the aforesaid record, of which he asketh judgment etc. A day is given to them here on the fifteenth day after the Day of the Holy Trinity, in the same state as now, by the prayer of the plaintiff, the arguments of the parties being reserved to them etc. Afterwards upon that day the aforesaid parties did come by their attornies. And a day was given to them here on the morrow of St. Martin in the same state as now, their arguments being saved to them.

15. GLOVER *v.* THE ABBOT OF SHREWSBURY.

I.

Alan the glover of Shrewsbury complaineth of the Abbot of Shrewsbury that he did wrongfully take his beasts, to wit, three oxen etc., in a certain place that is called Porteman Islese etc.

Herle. The Abbot telleth you by his attorney that the seizure was made in C., and he avoweth the seizure good and lawful for that he found Alan's beasts in his several, committing damage, and so etc.

Passeley. In support of our complaint we tell you that the place where the seizure was made is known by both these names—and this was admitted by both sides—and we tell you that it is a common in which all the burgesses and residents of the vill of Shrewsbury common with all their cattle in all seasons of the year.

Herle. Do you claim this as common appendant or as a gross [granted] by speciality?

Passeley. We hold divers messuages in the vill of Shrewsbury and we say that all they that hold these messuages have had common from a time higher than memory, and we are ready etc.

Herle. Then you claim it as appendant?

BEREFORD C.J. We take it to be so here.

Herle imparled and came back and said: You have heard how that he claimeth this common as appendant.

Passeley. We claim as being resident in the vill of Shrewsbury.

Herle. Tut fut cele place commune a les Burgeis de S. il poet estre qant a vous seueral et ceo vous prouera y ieo car le seignur du soil ou vn des comuners pount auower pur pasture in commune vers vn estrange com en lour seueral pur damage fessant.

Ber a Hle respounetz etc.

Hle. Sire a ceo qil dient qe ceo est lour commune etc. nous dioms qe celui alein ne nul de la ville de Saloup vnkes nauoient commune en cele place si noun par suffrance ou par lour donant et prest etc.

Toud. Qe nous auom commune com nostre dreyt et nent de volente et sanz rien doner prest etc.

II.¹

Replegiare ou le respondant ² mist auant vn response qe fut duble et fust chace a prendre al vn etc.

Aleyn de Colecestre se pleint qe Labbe de B. a tort prist ses auers en G. en vn certeyn lieu qest appelle .P. le Priour auowa la prise etc. par la reson qil est seignour de soil auantdit qest son seueral.

Toud. Nostre comune prest etc.

Ber. Il dit qil est seignour par qi le droit est a lui dont si vous voletz clamer comune en autri soil il couent dire title.

Toud. Nous sumes burgeis de Salope et voz tenantz de cel burgage et tous les Burgeis de la ville ount comune en cele place du temps dont memore niad sanz ceo qe lui abbe ou ses predecessours vnqes ne pernest prest etc.

Herle. Vostre response si est double ou qe clamez come appendant a vostre burgage ou en autre qe les burgeis ount comune de temps etc. mes si vos clamerez come appendant a franc tenement dont nous voloms dire qe vous nauetz nul franc tenement Et si vos voletz dire seisi de temps etc. nous poms alleguer interrupcion.

Et pur ceo etc. seisi du temps dont etc. ceo qe Labbe et ses etc. vnqes. Et alii e contra.

Et nota per *Bereford* qe nul ne poet si long temps comuner a volente qe vos ne lui poetz ouster.

¹ Text of (II) from *D.*

² This word has been supplied from conjecture, as only the merest trace of the original remains.

Herle. Though this place were common to the burgesses of Shrewsbury, it might yet be a several in respect of you ; and that I will prove to you in this way. The lord of the soil or one of the commoners might avow against a stranger pasturing in the common for committing damage in their several etc.

BEREFORD C.J. to *Herle.* Answer etc.

Herle. Sir, to what they say, that this is their common etc., we reply that neither this Alan nor any of the vill of Shrewsbury ever had common in this place except on sufferance or by payment ; and we are ready etc.

Toudeby. Ready etc. that we have common as of our right, and not by permission or payment.

II.

Replevin, where the respondent proffered a double answer, and was constrained to choose which he would abide by.

Alan of Colchester complaineth that the Abbot of B. did wrongfully take his beasts in G., in a certain place that is called P. The Abbot avowed the seizure etc., because that he is lord of the aforesaid soil that is his several.

Toudeby. Our common, ready etc.

BEREFORD C.J. He saith that he is lord and that thereby he hath the right. If you want to claim common in the soil of another, you must show your title.

Toudeby. We be burgesses of Shrewsbury and your tenants there by burgage, and all the burgesses of the vill have had common in this place from a time to the contrary of which memory runneth not without that the Abbot or his predecessors ever seized aught. Ready etc.

Herle. Your answer is double. You must claim as appendant to your burgage, or else upon the ground that the burgesses have had common from a time etc. If you claim as appendant to your freehold, we shall say that you have no freehold. And if you say seised from a time etc., then we shall be able to show interruption.

And so they pleaded seisin from a time etc., during which neither the Abbot nor his predecessors ever etc. And the other side joined issue.

And note that BEREFORD C.J. said that no length of commoning by suffrance would be a bar to ejectment.

16. THE PRIOR OF LEWES v. BUTLER.¹I.²

Replegiare ou dit fut qe le ior ne fut mye trauersable mes furent a issue qil y auoit plee pendant la einz de autele nature qe ceo fut tout vne prise.

Le Priour de Lewes se plaint qe Edmund le Boteler etc. a tort pristront ses auers nomement .ij. boefs en la ville de Walyngford en le Countee de Oxone et les enchacea tanqe a son maner de C. en autre Conte.

Scrope. Qant al vn boef nous nel primes pas prest etc. et qant al autre nentendoms my qil deyue estre resceu qe mesme cesti Priour porta vers nous vn Replegiare qest ceinz de mesme la prise ou il bie recouerir damages et sil deit estre resceu a cel bref il recouera .ij. foitz damages pur vne Trespas qest inconuenient de lei iugement sil deiue estre resceu.

Pass. Ceo ne poez dire qe nous contames la prise estre faite le Mardy procheyn auant le saint Michel et en cesti bref le Mardy procheyn apres et nous sumes a vn del ior et del lieu iugement.

Scrope. Nous ne poms estre a issue del ior a ceste plai par lai et nous le voloms auerrer qil ni auoit qe vne prise.

Pass. Il ad nent .ij. prises prest etc.

Et alii e contra.

II.³

Trespas.

Vn homme porta son bref de trespas fundu sur statut de Marleburghe de ses auers pris en vn Countee et chace tanqe a autre Countee etc. ou le defendant dist qil i auoit plee entre eux pendant par le Replegiare de mesme la prise et lautre qil auoit assigne la prise estre fete a autre iour etc. et issint diuers iours et diuers prises etc. par qai etc. et a ceo fust dit qe ley ne soeffre mye qe homme ne seit ij. foithe puny pur son trespas qar si lauerement passast encountre lui en le Replegiare seerrit amercie etc. pur ceo qil ne put trauerser le iour de la prise dont si par collusion eyez assigne autre iour pur ceo ne deit autre foithe estre

¹ Reported by D and Z. ² Text of (I) from D. ³ Text of (II) from Z.

16. THE PRIOR OF LEWES *v.* BUTLER.

I.

Replevin, where it was said that the day assigned for the seizure was not traversable ; and the parties joined issue as to whether another plea that was pending related to a similar seizure or to the same one.

The Prior of Lewes complaineth that Edmund the Butler etc. did wrongfully take his beasts, to wit, two oxen, in the vill of Wallingford in the county of Oxford ¹ and did drive them to his manor of C. in another county.

Scrope. As to one ox, we did not take it. Ready etc. And as to the other we do not think that he ought to be received, for this same Prior hath brought against us a writ of replevin in respect of this same seizure, now pending in this Court, by which he seeketh to recover damages ; and if he be received in this present writ he may recover damages twice for one trespass, which would be incongruous with law. Judgment whether he ought to be received.

Passeley. You cannot say that, for [in the other case] we counted that the seizure was made on the Tuesday next before Michaelmas Day, and in this writ that the seizure was made on the Tuesday next following ; and we agree as to the day and the place. Judgment.

Scrope. The law doth not suffer us to join issue on the day in a Averment.
plea of this sort ; and we will aver that there was but one seizure.

Passeley. There were two seizures. Ready etc.

And the others joined issue.

II.

Trespass.

A man brought his writ of trespass founded on the Statute of Marlborough ² in respect of his beasts seized in one county and driven into another county etc., and the defendant said that there was another plea of replevin pending between them in respect of the same seizure. The plaintiff replied that the [other] seizure was assigned to a different day etc., and so the pleas were for different seizures made upon different days etc., wherefore etc. And to this the defendant said that the law would not suffer a man to be punished twice for his trespass ; and if the averment should pass against him in the writ of replevin he would be amerced etc., for he could not traverse the day assigned for the seizure. If, then, you have by collusion assigned another day [in the other writ],

¹ Wallingford is in Berkshire, on the road between Reading and Oxford.

² Cap. iv. (52 Henry III.).

puny et puis il dist qe saccion sourde dun autre prise prest etc. et le defendant qe de mesme la prise qest pendant par le replegiare etc. Et oppinio Iusticiariorum fuit qe ceo est en eleccion le pleintiff de porter bref de trespas fundu sur statut de Marlebrege ou le Replegiare mes sil prigne a lun lautre est esteynte etc.

17. COOPER v. DELEGOLD.¹I.²

Replegiare lauowere fut fete pur .C.s. parcele de .x. li. qe furent areres le iour de la prise com de rente charge ou le tenant des tenementz dit qe la femme fut seisi par vn recouerir etc. dune partie del demesne et par tant voleit destruiere tote lauowere et le tenant pria eide de sa femme et la femme qe fut auowant voleit oster del eide pur ceo qe le tenant fut entre par disseisine et leide fut grante etc.

Iohan le Couper se pleynt qe Isoud qe fut la femme Richard Ildok atort prist vne sa iument.

Ing. auowa etc. et pur la resoun qe certeyn tenementz etc. si furent en ascun temps en la seisine Richard Ildok iadiz baroun Isoud dount le leu etc. le quel Richard de mesme ceux tenementz enfeffa vn Richard Dauby etc. et pur le quel feffement mesme cesti Richard Dauby graunta pur luy et pur ces heys estre tenuz a Richard Ildok et Isoud sa femme et a lez heys Isoud en .x.li. ³a paier a .ij. termes seilicet a la pasche et a le seynt Michel etc. par an et graunta qe⁴ quele heure qe ceux .x.li. fuissent arrere qe bien lirreit a Richard Ildok et a Isoud sa femme etc. a destreyndre en les ditz tenementz etc. Et pur ceo qe .x.li. furent arreres ⁵de lan prochein auant⁶ le iour de la prise⁷ si auowe Isoud ⁸la prise etc. pur les .C.s. arreres del terme seint Michel en mesme lan en le lu etc. com en parcele etc. des tenementz chargez et obliges a sa distreynte Et hoc fecit quia districcio non sufficiebat quantum ad solucionem arreragiorum.⁹

Scrop. La ou Isoud auowe etc. et dit qe ceux tenementz chargez si¹⁰ furent en la seisine vn Richard Ildok iadiz soun baroun qe hors de sa seisine enfeffa vn Richard Dauby la vous dioms nous qe mesme ceste Isoud porta soun bref de Dower de mesme ceux tenementz et demanda ces tenementz et recouera ceinz la moyte par iugement et del heure

¹ Reported by *B, C, D* (twice), *G, M, P, R, T, X, Y*. Names of the parties from the Record.

² Text of (I) from *P* collated with *T* and *M*. Headnote from *P*. *M* gives the defendant's name variously as 'Iacok' and 'Idel.'

³⁻⁴ par an et en, *M, T*. ⁵⁻⁶ *M, T* omit. ⁷ *M* adds del terme etc.; *T* adds et du terme etc. lan etc.

⁸⁻⁹ de *C* etc. *T*. ⁸⁻¹⁰ de *G*. etc. en les tenementz etc. chargez, *M*. A blank space is left after chargez.

he ought not to be punished twice. And then the plaintiff said that this action related to another seizure ; ready etc. ; and the defendant said that it was the same seizure as that to which the writ of replevin that was pending related. And the Justices were of opinion that the plaintiff might elect whether he would proceed by way of a writ founded on the Statute of Marlborough or by a writ of replevin and that if he took action on one of these his right to the other would be extinguished.

17. COOPER *v.* DELEGOLD.¹

I.

Replevin. The avowry was made in respect of a hundred shillings, parcel of a rent charge of ten pounds, that were in arrear on the day of the seizure. The tenant of the tenements saith that the avowant was seised by a recovery etc. of a parcel of the demesne ; and by virtue of this he sought to destroy the whole avowry, and he prayed aid of his wife ; and the avowant tried to prevent him from having aid, on the ground that he had entered by disseisin. But aid was allowed etc.

John the Cooper complaineth that Isoud that was wife of Richard Ildok did wrongfully take a mare, his property.

Ingham avowed etc. and for the reason that certain tenements etc. were at one time in the seisin of Richard Ildok, aforetime husband of Isoud, in which the place etc. The said Richard enfeoffed one Richard Davy etc. of the tenements ; and in consideration of this feoffment this same Richard Davy acknowledged himself and his heirs bound to Richard Ildok and Isoud his wife and to the heirs of Isoud in the sum of ten pounds to be paid at two terms, to wit, at Easter and Michaelmas of every year, and he granted that whenever those ten pounds should be in arrear then it should be lawful for Richard Ildok and Isoud his wife etc. to distrain in the said tenements etc. And because ten pounds, due the previous year, were in arrear on the day of the seizure, Isoud avoweth the seizure etc. for the hundred shillings that were in arrear for the Michaelmas term in the same year, in the place etc., as in parcel etc. of the tenements charged and bound to her distress. And she did this because the distress was not sufficient to pay the arrears.

Scrope. Whereas Isoud avoweth etc. and saith that the tenements charged were in the seisin of one Richard Ildok, aforetime her husband, that out of his seisin did enfeoff one Richard Davy, we tell you that this same Isoud brought her writ of Dower in respect of these same tenements and claimed these tenements and did recover here the moiety

¹ See the *Introduction*, p. xxxviii.

quele est seisi de la moite dez tenementz chargez iugement si en lautre moyte pur lentere de ceste rente pusse destreynte auower.

Toud. Si dyuers tenementz seyent chargez en vn rente bien list a celly a qi la rente est due de destreyndre en chescun parcelle pur lentere etc. et issy chescun parcelle demoert charge de lentere iugement etc.

Denom. Vous dites bien la ou les tenementz sount en la mayn dun tenant ¹mes la ou cely a qi la Rente est due purchace vne partie dez tenementz chargez de tant si sunt les seruicez esteinz et del houre qe vous ne poez dedire qe vous nestes tenant² de parcelle iugement si pur lentere pussez destreinte auower.

Frisk. Vous nauez mestre a pleder fors par tant qe nous bioms par nostre auowere recouerir et ceo nest qe .C. souz par qi etc.

Scrop. Donqz voilletz vous dire qe les autres .C. souz ne sunt pas dues ne furent le iour de la prise.

Toud. Nous dioms qe .x.li. furent arreres et dues le ior de la prise mes nostre auowere se destent sur lez .C. souz pur queux nous auowoms et a ceo respounetz nent par qi etc. et prioms retourne etc.

Berr. Mesqe vn seignur eit auowe sur soun tenant pur plusours³ de seruices qe nesteient dues del tenement tut puisse le tenant prouer qe tant nest mye due ⁴pur tant⁵ nabatera mye lauowere qil ne respoundra del remenant auxi par de cea tut puisse il moustrer qe lez .x.li. ne sunt pas dues par taunt ne abatera il sauowere de lez .C. souz pur queux il ad auowe.

Hing. ad idem. Ieo porte moun precipe quod reddat deuers vous et demande deuers vous⁶ .x. acres de terre vous vocez en countre moy mon relees dune acre vngore si respoundrez vous de remenant.

Scrop. Nest pas semblable en cas la ou vne chose est esteint par fet et en cas la ou ele est esteint par ley qar pur le purchace le seignur del demesne si serrount les seruices departables apporciones issi qe solom la quantite qil eit purchace de la tenaunce si serriount les seruices en sa mayn esteintz et des autres seruices qe ne sunt my departables com sute de Court et huius modi par my le purchase le seignur dune partie del demesne qe tenu fut par seute tut serra esteint.

Berr. Nest pas grauntable ceo qe vous ditez eynz vous die ieo qe la seute serra mys com en estent et issy apporcione et solom la

¹⁻² *T* omits.

³ plus, *T*.

⁴⁻⁵ *M* omits.

⁶ touz, *M*.

by judgment ; and seeing that she is seised of a moiety of the tenements charged, [we ask] judgment whether she can avow distress for the whole of this rent upon the other moiety.

Toudeby. If divers tenements be charged with a single rent, he to whom the rent is due is entitled to distrain for the whole rent upon any parcel etc. and consequently each parcel standeth charged with the whole. Judgment etc.

Denham. What you say is true when the tenements are in the possession of a single tenant ; but where the party to whom the rent is due hath purchased a parcel of the tenements charged, the services are proportionately extinguished ; and since you cannot deny that you are tenant of the parcel, judgment whether you can avow distraint for the whole rent.

Friskenev. You are not entitled to plead in respect of any larger amount than we are asking to recover, and that is a hundred shillings only ; wherefore etc.

Scrope. Do you want to say, then, that the other hundred shillings are not due and were not due on the day of the seizure ?

Toudeby. We say that ten pounds were in arrear and were due on the day of the seizure, but our avowry is for the hundred shillings for which we avow ; and you answer naught to that. Wherefore etc., and we pray return etc.

BEREFORD C.J. Though a lord avow on his tenant for several services that be not due from the tenement, and though the tenant can prove that so much is not due, yet, because he hath not answered in respect of the residue, the writ will not abate. So here. Though he may be able to show that the ten pounds are not due, yet, by so doing he will not abate the respondent's avowry of the hundred shillings for which she hath avowed.

Ingham, ad idem. I bring my *precipe quod reddat* against you and claim against you ten acres of land. You put in against me my release of one acre. You will, nevertheless, have to answer in respect of the residue.

Scrope. There is no likeness between the extinction of a thing by a deed and its extinction by action of law ; for, if the lord of the demesne purchase, the services that be partible will be apportioned, so that such services as come into his hand, proportionate to the quantity of the holding purchased by him, will be extinguished ; and the other services that are not partible, such as suit of court and the like, will be extinguished entirely by the purchase by the lord of a parcel of the demesne that was held by suit.

BEREFORD C.J. We cannot accept what you say, but I tell you that suit will be, so to speak, valued, and apportioned proportionately.

porcioun si deit ele en la mayn le seignour estre esteynt ¹et ceo est equite.

Pass. Sire verite est si ceo fut seruice departable mes si vn tenant tent par homage² et le seignour eit purchase vne partie del demesne nous entendoms qe le homage en tiel cas si est esteynt auxi de ceste part.

Berr. Vous dites talent qe en tiel cas ieo aueray homage par resoun de la parcelle qe demoert en sa mayn.

Pass. Sire³ si le homage seit vn seruice et vn gros par sey par le purchase le seignour dune partie del demesne le homage est esteynt⁴ mes si le homage ne seit vn gros par sey com homage dependant de escuage il ne se esteynt poynt.

Berr. Le quel qe ceo seit gros ou grele ieo aueray auxi bien homage de la parcelle com de lentere.

Toud. La forme de chalenger auowere qant le seignour auowe pur plus des seruices qe fere ne deit est qe la partie deit dire issint⁵ saue nous seit ceo qe nous auoms dit etc. et vous respounetz du remenant com a dire nous ne tenoms my par tiels seruices einz par tiels seruices etc.

Scrop. Vous deissez bien si nous fussions entour de vous ouster de vostre auowere par fet qe cherreit⁶ en pais mes ore sumes ici a destruiere vostre auowere et par vostre fet demesne pur ceo qe vous estes seisie de partie des tenementz chargez et par vne recouerir a vostre seute demesne quel seute vous ne deuez⁷ mye mesconustre⁸ par qi etc.⁹

Denom. Si vn rente seck moy seit due¹⁰ des tenementz dount diuerses gentz sunt en tenance si vn des tenantz me disseise ieo naueray mye mon recouerir par disseisine se ieo ne nome¹¹ trestouz les tenantz et par tant pert qe touz les tenantz sunt chargez et del heure qe vous estes seisi del parcelle iugement etc.

Berr. Nient semblable qar en prise dez auers par vostre auowere vous excusez vous mesme dune torcenouse prise la quele etc. la partie attache en vostre persoun et quele prise est auowable en chescun parcelle des tenementz chargez et la force de quel auowere tut chet sur le lieu ou la prise fut fet mes en assise de nouele disseisine si conuent il qe vous ¹²diez en vostre pleynt et nomez touz les tenements dount la rente ist et per consequens si conuent il qe vous¹³ nomez trestouz les tenantz de ceux tenementz et sic dissimile.

¹⁻² *T* omits. ³⁻⁴ *T* repeats these words, prefixing mes. ⁵ *T* adds videlicet. ⁶ From *M* and *T*; *P* has gerrereit. ⁷ serrez, *M*. ⁸⁻⁹ From *T*; *P* omits. ¹⁰ demande, *M*. ¹¹ nomasse, *M*. ¹²⁻¹³ Supplied from *T*; *P* omits.

and such portion of it as may be in the hand of the lord ought to be extinguished. And that is equitable.

Passeley. Sir, that would be true enough if this service were partible. But if a tenant hold by homage and the lord purchase a parcel of the demesne, we think that, in such case, the homage would be extinguished. So here.

BEREFORD C.J. You are talking without warrant, for in such circumstances I shall have homage by reason of the parcel that remaineth in the tenant's hand.

Passeley. Sir, if the homage be a service and a gross in itself, then, by the purchase by the lord of a parcel of the demesne, the homage is extinguished ; but if the homage be not a gross in itself, as homage dependant from escuage, it will not be extinguished.

BEREFORD C.J. Whether it be *gros* or *grêle*,¹ I shall have homage of the parcel as I had homage of the whole.

Toudeby. The proper form of challenging an avowry when the lord avoweth for more services than he is entitled to is to say 'saving to us what we have said etc.' ; and then you answer in respect of the residue ; as for example, 'we do not hold by such services, but by such other services etc.'

Scrope. What you say would be very proper if we were trying to oust you from your avowry by a deed which would have to go before a jury ; but now we are here to destroy your avowry, both through your own deed, for you are seised of a parcel of the tenements charged, and through a recovery got at your own suit, which suit you cannot refuse to admit. Wherefore etc.

Denham. If a rent seek be due to me from tenements held by divers tenants, and one of these tenants disseise me, I shall not get a recovery by a writ of novel disseisin unless I name all the tenants. Whence it appeareth that all the tenants are charged ; and since you are seised of the parcel judgment etc.

BEREFORD C.J. The cases are not similar, for, in a seizure of cattle, you, by your avowry, exculpate yourself of a tortious seizure of which the plaintiff allegeth that you are personally guilty ; and though this seizure be avowable in each parcel of the tenements charged, the assignment of the particular place where the seizure was actually made is of the essence of the avowry ; but in an assize of novel disseisin you must state and name in your plaint all the tenements from which the rent issueth ; and, consequently, you must name all the tenants of those tenements ; and so that case differeth from this.

¹ It is impossible to preserve the *gross*, 'a thing entire in itself' and Chief Justice's pun in a translation. 'stout.' *Grêle*, of course, is the opposite of *gross* with the latter meaning.

Denom. Nous nauoms rien en ceux tenementz ou ele ad auowe etc. si noun com del dreyt Margerie nostre femme saunz qi nous ne poms ceux tenementz charger ne descharger et prioms eyde de ly.

Toud. Eyde ne deuez auer qar vous mèsme disseisastes Richard Dauy qe ceux tenementz ¹a nous chargea² et del houre qe vous estes tenant des tenementz chargez et de vostre tort demesne iugement si eyde deuez auer.

Denom. Nous sumes issi en vn prise des auers ou le dreyt de la tenance ne put estre trie iugement si eide ne deuoms auer.

Et stetit auxilium.

*Rodel*³ *Justice.* Suez bref a somoundre vostre femme qe seit ici a la .xv. de la Trinite.

Quod quidem breue antiquitus fieri non solebat mes garnir⁴ sa femme qele fut etc. mes⁵ tut fust autre⁶ tut erit⁷ autre nouel Rey nouel ley ⁸nouel Iustice⁹ nouels mestris¹⁰ etc.

II.¹¹

Replegiare ou il auowa pur rente charge pur lenter de seruicez en cas ou lauowant fut seisi de partie des tenementz dunt les seruicez issauntz etc.

¹²Vn Ion Copener de T. porta son Replegiare deuers Isoud etc. et dit qe atort prit sa lumentie et fut le bref tiel¹³ Rex vicecomiti etc. precipimus etc. quod assumptis etc. et accedas ad hundredum episcopi eliensis de Meteford et in pleno hundredo illo recordari facias loquelam que est in eodem hundredo sine breui nostro inter Ricardum dauy et Issoldam que fuit uxor ricardi de Hilgolde de quodam lumento ipsius capto et iniuste etc. et recordum illud etc. sub sigillo etc. teste me ipso quod¹⁴ predicta Issolda cepit lumentum predictum in quodam tenemento apud suteburi districioni eiusdem Issolde obligato in quodam anno reditu eiusdem Issolde debito vt dicit fiat execucio etc. si causa sit vera.

¹⁵*Hengh.* Isoud auowe la prise ¹⁶bone et resonable¹⁷ par la reson qe le dit Richard Ilgold enfeffa Richard Dauy des certeinz tenemenz en .C. lequel Richard Dauy pur celfeffement granta estre tenu pur lui et pur ses heirs a Richard Ilgold et Isoud sa femme et les heirs Isoud en .x.li. a la

¹⁻³ auoms charge, *M.* ³ Roscel, *M.* ⁴ somoundre, *M.* ⁵ ou, *M.*
⁶ *T* adds et. ⁷ est, *M.* *T.* ⁸⁻⁹ *M* omits. ¹⁰ mestres *M*;
 Mestries, *T.* ¹¹ Text of (II) from *R*, collated with *G* and *Y*. Headnote
 from *G*. ¹²⁻¹³ From *G*. *Y* has Johan le couper de Cranford se pleint qe Isoud
 qe fu la femme Richard Ilgold de Suthburie qe atort auoit pris son iument. *R*
 omits. ¹⁴ quia, *G*. ¹⁵ to ¹ on p. 88, from *Y*. *G* has the same, with slight
 variations. *R* omits. ¹⁶⁻¹⁷ *G* omits.

Denham. We have naught in those tenements whereof Isoud hath avowed etc., save in the right of Margery our wife, without whom we can neither charge nor discharge those tenements, and we pray aid of her.

Toudeby. You ought not to have aid, for you yourself disseised Richard Davy that charged these tenements to us ; and seeing that you are tenant of the tenements charged, and tenant by your own tort, judgment whether you ought to have aid.

Denham. We are here in a seizure of cattle, where the right to the tenancy is not triable. Judgment whether we ought not to have aid.

And aid was allowed.

—¹ Sue out a writ summoning your wife to be here on the quindenes of the Trinity.

Such writ did not use to be made of old time, but notice was sent to the wife to be here etc. But all was once other than it is now, and will be other again. New King, new law, new Justices, new masters etc.

II.

Replevin, where the avowant avowed for the whole rent-service charged upon the tenements, though she herself was seised of a parcel of the tenements from which the services issued etc.

One John Cooper of T. brought his writ of replevin against Isoud etc. and said that she wrongfully took his mare. And the writ ran thus : The King to the Sheriff etc. We command etc. that associating with you etc., you go to the hundred of Mutford that is of the Bishop of Ely and in the full hundred court thereof you make to be recorded the suit that is pending in that hundred, without writ of Ours, between Richard Davy and Isoud that was wife of Richard of Hilgold touching a certain mare, the property of the same Richard Davy, seized and unjustly etc., and that record etc., under the seal etc. Witness Myself. Because the aforesaid Isoud took the aforesaid mare in a certain tenement at Sudbury that was bound to the distrain of the same Isoud in a certain annual rent service for the same owed to Isoud, as she saith. Let execution be done etc., if the complaint be true.

Ingham. Isoud avoweth the seizure good and lawful by reason that the said Richard Ilgold enfeoffed Richard Davy of certain tenements in C., the which Richard Davy did, in consideration of this feoffment, grant himself to be bound for himself and his heirs to Richard Ilgold and Isoud his wife and the heirs of Isoud in ten pounds at Easter

¹ See the *Introduction*, pp. xlvii, xlviii.

Pasche etc. a quel houre qe cele Rente fut arere bien lirreit a Richard Ilgold et Isoud sa femme et les heirs etc. distreindre les tenemenz Richard Dauī en .C.¹

Toud. ²correxīt sic³ Richard dauī granta pur li et pur ces heirs estre tenuz a Richard hilgold et a Issolde sa femme et a les heirs Isoud en .x.li. ⁴par an⁵ et a quel houre qe les dis liures furent arreres bien lurent etc. Destreindre les tenemenz Richard Dauī en C. sauer vn mies et deus carues de terre et pur ceo qe tant fu arrere du terme de pasche Lan du regne le Roy Edward pere etc. xxxiiij. si auowe il la prise du lumentē en le lieu ou la prise fu fet cum en parsele des tenemenz charges et pur ceo qe la lumentē ne put suffire pur lenter des dis liures pur ceo auowe pur les .C.s.

Scrop. Auez vous bien entendu coment il ont auowe pur x.li. a ceo vous dioms nous qe pur x.li. ne puet ele auower Car nous vous dioms qele mesmes recoueri seisine par bref de dowere de la moite des tene-
menz charges.⁶

Toud. Si diuers tenemenz seient charges de vne rente bien list a ⁷celi a qī la rente est due⁸ destreindre en chescun parcele etc.

Scrop. Et quei sil purchace partie des tenemenz list ali adunqe destreindre pur lentier quasi diceret non.

Alīo die

Scrop. Nous demandoms iugement de ceste auowere de loure qe nous voloms auerer qele est seisi de partie des tenemenz si purlentier etc.

Frisk. Quei responet vous a c.s. pur les queux nous auoms auowe.

Scrop. Nous pernomz a la fourme⁹ de vostre auowere qe vous auez dist qe x.li. sunt dues des tenemenz et ceo auez clame en auowant et en proue de ceo auez mis auant en la court vn fet qe ceo tesmoigne.

Toud. Nous dioms cum auant qe x. liures sont dues¹⁰ mes nostre auowere est de C.s.

Scrop. De ceo qe vous clamez en auowant nous pernomz nostre¹¹ excepcion car ceo est nostre fet qe¹² vous estes seisi des tenemenz vt supra.

Berr. ¹³Coment qe home en auowant die qe son tenant tient de li par diuers seruices sa auowere pūt descendre sur vne des seruices auxi par de eza.¹⁴

¹ from ¹⁵ on p. 87, from *Y.* *G* has the same, with slight variations. *R* omits. ²⁻³ From *Y*; *contradixit sic, G.* *R* has auowa la prise par la resoun qe. ⁴⁻⁵ a la Pasqe, *G.* ⁶ *Y* adds de ces .x. li. iugement si pur lentier puisse auowere etc. del houre qe ele est seisi des tenemenz chargez. ⁷⁻⁸ celui qe deit la Rente, *Y.* ⁹ force, *G.* ¹⁰ *G* and *Y* add des tenementz et furent arreres le Jour etc. et vncore le dioms. ¹¹ *G* adds nostre title de. ¹² From *G* and *Y*; *R* has mes. ¹³⁻¹⁴ coment qil en auowant die qe soun tenant tynt de ly par diuers seruicez sa uouere poit descendere sor vn seruitz ausi de ceste part, *G.*

etc., and whenever that rent should be in arrear then Richard Ilgold and Isoud his wife and the heirs etc. should be free to distrain the tenements of Richard Davy in C.

Toudeby corrected as followeth :—Richard Davy granted for himself and his heirs to be bound to Richard Ilgold and to Isoud his wife and to the heirs of Isoud in ten pounds a year ; and that whenever the ten pounds were in arrear they should be entitled to distrain the tenements of Richard Davy in C., to wit, a messuage and two carucates of land. And because that a certain sum due at the Easter term in the thirty-fourth year of the reign of King Edward, father etc., was in arrear, Isoud avoweth the seizure of the mare in the place where the seizure was made as in a parcel of the tenements charged ; and, because the mare was not sufficient distress for the whole ten pounds, she avoweth for a hundred shillings.

Scrope. You have heard them avow for ten pounds ; and to that we say that Isoud cannot avow for ten pounds, for we tell you that she herself hath recovered seisin, by a writ of dower, of a moiety of the tenements charged.

Toudeby. If a single rent be charged on divers tenements, he to whom the rent is due may distrain in every parcel etc.

Scrope. And what if he purchase a parcel of the tenements ? Can he still distrain for the whole rent ?—*inferring that he could not.*

Upon another day—

Scrope. Seeing that we are ready to aver that Isoud is seised of a parcel of the tenements, we ask judgment of this avowry, whether for the whole etc.

Friskeny. What do you answer to the fact that it is a hundred shillings for which we avow ?

Scrope. We take our stand on the effect of your avowry, in which you have said that ten pounds are due from the tenements, and that sum you have claimed in avowing ; and, in proof of that, you have tendered in court a deed that witnesseth it.

Toudeby. We say, as before, that ten pounds are due but that our avowry is for a hundred shillings.

Scrope. We base our exception on what you claim in your avowry ; for by our deed you are seised of the tenements as above.

BEREFORD C.J. Though a man say in avowing that his tenant holdeth of him by divers services, he may, in his avowry, rely upon one of these services. So here.

Huntingdoun. ¹Ieo porte moun bref precipe quod reddat vers vous de x. carues² de terre vous auez moun reles et quiteclame de vn acre de terre nient contre esteant cel reles vous respoundrez ³du remenant⁴ et vncore puis ieo auer bref de ⁵x. carues⁶ de terre.

Scrop. Vous parlez de plai de terre mes mettet qe vous tenez certain tenementz par seute et autres services et vous purchacet vne parcele de ceus tenementz par vostre purchas ⁷est la seute⁸ esteinte ⁹pur ceo est vn service nent departable.¹⁰

Berr. ¹¹Ieo le vous deny¹² si le seignour purchace de son tenant qe tient de li .iiij. carues de terre et le seignour purchace .iiij. acres de terre et vne seute seit due de lentier est la seut esteint ¹³en la main le seignour¹⁴ noun¹⁵ est einz ¹⁶par la court¹⁷ serra aporcione Car ele chiet en estente.

Scrop. Vous dites verite si ceo fust service partable ¹⁸mes si les services ne se estenderunt par le purchas le seignour autrement¹⁹ freit le seignour les services par sa mein demene qe serreit en countre lei de terre.

Berr. Cum la pucele dist au vallet qe li demanda ²⁰si ele fust pucele assaiet assaiet ²¹auxi assaiet vous²² et si la seute ne serra aporcione mei blamet.²³

Denum. Illi²⁴ ad autre prise ceins pur les autres .c.s. et pur ceo nous counteroms.

Berr. Countez et nous froms tut vn issue.

²⁵Ceo vous moustre Ion le Couper etc. qe Isoud etc. atort prist vn soen chiual etc.

Heng. Isoud auowe la prise par la reson qe Richard Dauigranta a Richard Ilgold et Isoud sa femme et les heirs Isoud .x.li. par an a la Pasche et a ceo faire se obliga lui et ses heirs et quel houre qe la rente fut arere list au dit Richard et Isoud et les heirs Isoud distreindre le dit Richard Dauigranta en totes ses terres et ses tenementz en C. en qi meins qil deuiendrent et pur ceo grante Richard Ilgold dona au dit Richard Dauigranta terres en C. sauer vn mees .ij. carue etc. Et pur ceo qe .x.li. sunt arere de la Pasche lan du regne le Roi Edward pere etc. xxxv. si auowe Isoud pur .C.s. de .x.li. etc. en lieu ou il se pleint com en parcel etc.²⁶

¹ *Heng. G, Y.* ² acres, *G, Y.* ³⁻⁴ de .x. acres etc., *G*; de .ix. acres etc., *Y.*
⁵⁻⁶ .x. acres, *G*; .ix. acres, *Y.* ⁷⁻⁸ la suite est, *Y.* ⁹⁻¹⁰ Supplied from *Y.*
¹¹⁻¹² Supplied from *Y.* ¹³⁻¹⁴ From *G.* ¹⁵ quod diceret non, *G.* ¹⁶⁻¹⁷ From *G.* ¹⁸⁻¹⁹ mes sire si par purchase le seignour les services ne se esteindrent, *Y.* *G* has the same with slight variations.
²⁰⁻²² assaiez viegne tieu cas cienz assaez, *Y.* ²¹⁻²³ et assaiet si la seute ne serra porcione moy blamet, *G.* ²⁴ il ont conu qe lui, *Y.* ²⁵⁻²⁶ From *Y.* *G* has the same, with slight variations. *R* has Et pus counterunt et la vouwe fu fet cum auant de la prise auandist.

Huntingdon. I bring my writ *precipe quod reddat* against you for ten carucates of land. You have my release and quitclaim in respect of one acre of land. That release notwithstanding, you will have to answer as to the residue ; and I can yet have a writ for ten carucates of land.

Scrope. You are talking of a plea of land, but suppose that you hold certain tenements by suit and other services, and you purchase a parcel of those tenements. The suit is extinguished by your purchase, because it is not a partible service.

BEREFORD C.J. I do not agree. If the lord purchase four acres of land from a tenant that holdeth four carucates of him, and suit be due on the whole, is the whole suit extinguished because a parcel of the land is in the hand of the lord ? It is not ; but it will be apportioned by the Court, for it can be valued.

Scrope. What you say would be true if this were a partible service ; but if the services be not extinguished by the purchase of the lord, then the lord will himself be rendering services, which would be contrary to the law of the land.

BEREFORD C.J. As the maiden said to the varlet that asked her were she a maid, 'Make trial ! make trial !' so do you make trial and if suit shall not be apportioned blame me.

Denham. There is another seizure in court here in respect of the other hundred, and we will count thereof.

BEREFORD C.J. Count, and we will make it all one issue.

'This sheweth you John the Cooper etc. that Isoud etc. did wrongfully take a horse, his property etc.'

Ingham. Isoud avoweth the seizure by reason that Richard Davy granted to Richard Ilgold and Isoud his wife and the heirs of Isoud ten pounds a year at Easter, and bound himself and his heirs to this, and whenever the rent should be in arrear then the said Richard and Isoud and the heirs of Isoud should be entitled to distrain the said Richard Davy in all his lands and tenements in C., into whose hands soever they might have come ; and in consideration of this grant Richard Ilgold gave to the said Richard Davy lands in C., to wit, a messuage, two carucates etc. And by reason that ten pounds that were in arrear at Easter in the thirty-fifth year of the reign of King Edward, father etc., Isoud avoweth for one hundred shillings, [parcel] of ten pounds etc. in the place where he complaineth as in parcel etc.

Denum. Vous auez bien entendu coment Isoud auowa pur C.s. de x.li. qe li furent arreres nous vous dioms qe ele est seisi des terres en noun de dower en queux ele auoe iugement si pur lentier etc.

Berr. Ele auowe pur C.s. quei responetz a ceo.

Pass. Si tenemenz seient tenuz par homage et le seignur purchase partie des tenemenz ¹le homage est esteint par soun purchas.²

Berr. Vous dites talent³ Car si vn tenant tient de mei .ij.⁴ mil acres de terre par homage et ieo purchase lun⁵ mill vncore⁶ il me fra homage entier.

Pass. Sire il est verite la ou homage depent descuage mes la ou homage est vn gros par sei il est esteint par le purchas etc.

Berr. ⁷Qest ceo homage gros si est vn rounde dener vn gros⁸ seit il gresle seit il gros⁹ Ieo aueray homage auxi bien de cele parcele cum delentier et ieo vous die vne chose pur les ieones qe sont en viroun tut auowe ieo pur plus de seruices ¹⁰qe nay ressu¹¹ pur ceo nabaterez mie ma auowere qe vous¹² respoundret de ceo qest due etc. si auowe pur .xx.s. et ¹³ieo eu¹⁴ purchase la quarte partie de la tenaunce vous nabaterez mie lenter de mauowere einz respounderet du remenant.

Toud. La manere est adire ¹⁵saue seit ceo est responet du¹⁶ remenant.

Berr. ¹⁷Vous dites verite.

Denum. Si rente sekke me seit due par les mains de diuers tenanz et ¹⁸ieo sei disseisi¹⁹ ieo naueraï mie lassise vers lun ke me disseisi sanz nomer trestouz les tenants auxi par de sa.

Berr. Vous mesprenez vostre parole car il nest pas semblable en lun cas et en lautre car en cas de auowere vous poez destreindre en chescune parcele pur lenter mes vous nauerez mie lassise vers chescun tenant de rente seck pur lenter ²⁰et pur ceo il vous couent nomer trestouz les tenants chargez ou qe vous eiez lassise pur lentier etc.²¹

Scrop. Nous vous dioms qe ceux tenemenz ou Isoud auowe ceste destresse si est le dreit nostre femme et nous nauoms rien si noun cum baroun par quei nous ne poums ceux tenemenz charger sanz nostre femme et prioms eyde de li.

Toud. Eide ne deuez auer qe vous mesmes disseisistes Richard etc.

¹⁻² chargèz de la homage etc., Y. ³ mal, G. ⁴ .x., G, Y. ⁵ de .ix, G.
⁶ Supplied from G. ⁷⁻⁸ Supplied from Y. ⁷⁻⁹ qi est homage vn gros ausi
 com vn dener etc. coment qil seit gros ou grele, G. ¹⁰⁻¹¹ Supplied from G. Y has
 qe reson. ¹² G and Y add ne. ¹³⁻¹⁴ il, G. ¹⁵⁻¹⁶ salue vous soit ceo et
 respoudre au, G, Y. ¹⁷ G adds responetz. ¹⁸⁻¹⁹ si vn moy disseise, G.
²⁰⁻²¹ Supplied from Y.

Denham. You have heard how Isoud avowed for a hundred shillings out of ten pounds that were in arrear to her. We tell you that of some of the land in which she is avowing she is seised in name of dower. Judgment whether for the whole etc.

BEREFORD C.J. She is avowing for a hundred shillings. What is your answer to that?

Passeley. If tenements be holden by homage and the lord purchase a parcel of the tenements, the homage is extinguished by his purchase.

BEREFORD C.J. You are talking without book; for if a tenant hold two thousand acres of land of me by homage, and I purchase one thousand of them, he shall yet do me full homage.

Passeley. Sir, that is true where homage dependeth on escuage but where homage is a gross in itself it is extinguished by the purchase etc.

BEREFORD C.J. What do you mean by homage being a gross? A round penny is a gross too. But be it *gros* or be it *grêle*,¹ I shall have my homage just as well from this parcel as from the entirety. And one thing I tell you for the learning of the young men that be about us²: Though I avow for more services than I have received you shall not abate my avowry for that reason; for you shall answer in respect of what is due etc. If I avow for twenty shillings and have purchased the fourth part of the holding you shall not abate the whole of my avowry, but shall answer for the residue.

Toudeby. The proper course is to say 'saving that, reply as to the residue.'

BEREFORD C.J. You say sooth.

Denham. If a rent seek be due to me at the hands of divers tenants and I be disseised, I shall not have the assize against the one [only] that did disseise me, but I must name every one of the tenants. So here.

BEREFORD C.J. You mistake in what you say, for there is naught alike in the one case and the other; for in the case of avowry you may distrain in each parcel for the whole debt, but in rent seek you will not get the assize against each tenant for the whole rent; and that is the reason why you must name all the tenants charged in the case where you have an assize for the entirety etc.

Scrope. We tell you that these tenements wherein Isoud avoweth this distress are the right of our wife, and we have naught in them except as her husband; wherefore we cannot charge these tenements without our wife, and we pray aid of her.

Toudeby. You ought not to have aid, for you yourselves did disseise Richard etc.

¹ See the note on p. 86.

² i.e. the Apprentices.

Denum. Pledoms nous ore le dreit des tenemenz.

¹Et auoit eyde.²

*Rotheler.*³ Agardez vos iours ⁴a quinzeine del trinite⁵ et seuez bref a somoundre vostre femme.

Denum. Il soleit estre qe il vst sa femme saunz somouns.

Rotheler. Ore il couient qe vous seuet bref etc.

III.⁶

Replegiare pur rente charge ou cel a qi le charge se fist auoit purchase la moite de tenemenz chargez et fet lauowere pur lenter.

Iohan le Coupere porta soun Replegiare vers Iseult qe fut la femme Robert Robert [*sic*] de Legole.

Ing. auowa la prise bone par la reson qe lauandit Iohan graunta par soun fait obligatorie sei estre tenutz al auandit Robert et a Iseult sa femme et a les heirs Iseult en .x.li. de rente par an a paier as certains termes et graunta par mesme le fait qe quele hure qe la rente fut arrere qe bien lirreit a les auanditz Robert et Iseult et a les heirs Iseult destreindre en toutz les terres qe lauandit Iseult auoit del feffement lauandit Robert en C. dont le lieu ou la prise fut faite est parcelle Et pur ceo qe les .x.li. de cel terme etc. si auowe il etc.

Denum. Donqes sumes nous en vn qe les .x.li. sont arere et qe vous auowe pur les .C. sous de les .x.li. donqes dioms nous qe a tele auowerie ne deuetz estre ressu pur la reson qe Iseult qi fist ceste auowerie ad recoueri vers nous la moite de ceux tenemenz chargez come soun dowere et est seisie par qi nous demandoms iugement si de ceste auowerie qe suppose qe nostre tenement est charge del entier de .x.li. ou lei de terre ne soeffre par qi vous pourretz vers nous auer lentier tant come vous mesme estes seisi de la moiete de tenemenz chargez deuez estre ressu.

Toud. Seietz auowe al accioun Estre ceo en rente charge chescune parcelle est charge del entier de .x.li. et tout puissetz barrer la femme de la moiete del rente par la reson qe vous auez dit nentendez vous nient respoudre del remanant quasi diceret sic et pur lauowerie qil

¹⁻² Et postea auxilium stetit, *G.* ³ Here and below *G.* has *Berr.* ⁴⁻⁵ *G.* omits.

⁶ Text of (III) from *D* (first version).

Denham. We are pleading now as to the right in the tenements.
And he had aid.

—¹ Keep your days on the quindenens of the Trinity, and sue out a writ to summon your wife.

Denham. It used to be that a man could have his wife here without a summons.

—¹ You must needs sue out a writ now etc.

III.

Writ of replevin of cattle seized for rent charge in arrear, where the party in whose favour the charge was made had purchased a moiety of the tenements charged, and made avowry for the entirety.

John the Cooper brought his writ of replevin against Isoud that was wife of Robert Legole.

Ingham avowed the seizure good by reason that the aforesaid John granted himself by his deed obligatory to be bound to the aforesaid Robert and to Isoud his wife and to the heirs of Isoud in ten pounds of yearly rent to be paid at certain terms, and granted by the same deed that when the rent should be in arrear the aforesaid Robert and Isoud and the heirs of Isoud should be entitled to distrain in all the lands which the aforesaid Isoud had of the feoffment of the aforesaid Robert in C.² of which the place where the seizure was made is parcel. And because the ten pounds due at that term etc. [were in arrear], he avoweth etc.

Denham. We are in agreement, then, that ten pounds are in arrear and that you are avowing for a hundred shillings of the ten pounds. We tell you, then, that you cannot be received to make such avowry because Isoud, that maketh this avowry, hath recovered from us, as her dower, a moiety of these charged tenements, and is seised of them. We ask judgment, therefore, whether, seeing that the law of the land doth not suffer you that are seised of a moiety of the tenements charged to claim the whole rent from us, you ought to be received to this avowry which supposeth that the tenement which we hold is charged with the full ten pounds.

Toudeby. The avowry must correspond with the right of action. Further, where you have a rent charged, every parcel is charged with the whole ten pounds; and though you might bar the woman from half the rent for the reason you have stated, do you suppose that you need not answer as to the residue—*inferring that they must answer—*

¹ See the *Introduction*, pp. xlvi, xlviii.

² This must mean all the lands charged in Iseult's favour.

ad fait il demande forsqe les .C.s. . Et dautrepart si ele vst accioun a demander les .x.li. entierment et vous la vssetz [paye] la moite et lautre moiete fut arere et ele auowast pur lentier tout la puisset vous reboter de la moite vngore ne la puissez barrer del autre moite.

Denum. Nous pernomz nostre excepcioun de ceo qele cleyme lentier par my la auowerie tant come ele est seisie de la moitee des tenemenz chargez et par tant lauowerie encontre comune ley et qant il auont fait bone auowerie nous respoundroms assez.

Frisk. Leffect de nostre dit est qele ne poet my lentier de les .x.li. demander par vostre reson auantdit et par tant al accioun et nous nauoms auowe forsqe pur les autres .C. sous par qi nous demandoms jugement et prioms retour.

Scrop. Vostre mesme auowerie ne poet estre fait del entier et de parcelle mes ceste auowerie fu bone si lentier fut arere et ceo supposez vous en auowant etc.

Denum. ad idem. En assise de novele disseisine sil entrelessast nul de tenemenz lassise cherreit.

Berr. Nest pas semblable come home put destreindre en chescun parcelle ou en lentier mes lassise couent estre vers toutz les tenemenz ou ele cherria.

Toud. Nous ne poms autre auowerie auer qil ne couent qe lauowerie seit acordant al especialte et nous ne voloms auower forqe pur les .c. sous.

Et puis lauowerie fut agarde bone.

Scrop. Les tenemenz sont de droit nostre femme sanz qi etc. et prioms eide de lui.

Toud. Eide ne deuetz auer qe lestatut qe vous auez est pur disseisine.

Denum. Volez pleder yci auxi come en assise de novele disseisine.

Berr. Il vous vaut plus qil eit eide et habuit.

Ing. Vous direz en le roulement quod habeat.

Denum. Ele serra a summoundre pur ceo qe ele purra estre sewe.

Et sic fuit factum.

and by the avowry which she hath made she claimeth only a hundred shillings? And, again, though she were to bring action for the whole ten pounds, and you had paid her the moiety thereof, yet, if the other moiety were in arrear and she avowed for the whole amount, you could not bar her from the unpaid moiety, though you might do so in respect of the other moiety.

Denham. We base our exception upon the fact that by her avowry she claimeth the whole amount, while she is seised only of a moiety of the tenements charged, and to that extent her avowry is contrary to the common law. When they make a good avowry we will make them a sufficient answer.

Friskenev. What we say amounteth to this, that she cannot claim the ten pounds, for the reason you have already given, and to that extent her right of action is affected; but we have avowed for the other hundred shillings only. Consequently we ask judgment and pray return.

Scrope. Your avowry cannot be made in respect of both the whole and the parcel. This avowry would have been good if the whole rent had been in arrear; and, in your avowry, you suppose this to be the case.

Denham, ad idem. If, in an assize of novel disseisin, any of the tenements be not mentioned, the assize will fail.

BEREFORD C.J. That is not a parallel case, for a man may distrain in each parcel or in the whole, while the assize must be in respect of the whole of the tenements or it will fail.

Toudeby. We cannot have other avowry, for it must needs be that the avowry be in accordance with the specialty; and we wish to avow for the hundred shillings only.

And the avowry was then ruled to be good.

Scrope. The tenements are the right of our wife, without whom etc., and we pray aid of her.

Toudeby. You ought not to have aid, for the statute¹ on which you are relying refers to the case of novel disseisin.

Denham. Do you want to plead here as you would in an assize of novel disseisin?

BEREFORD C.J. It will be better for you that he should have aid—and he had it.

Ingham. You will say in the record that he is to have [his wife here].

Denham. She must be summoned, so that process may be had against her [if she do not come].

And this was done.

¹ *Statutum de coniunctim jeoffatis*, 34 Edward I.

IV.¹

Iohan le Coupere se pleynt qe Iseult qe fut la femme Richard Elegod atort auoit pris sa iument.

Ing. auowa par la raison qe Richard Dauid ²fuit seisi dun mees et dun carue de terre etc. dount le leu³ etc. graunta a Richard Elegod et a ceste Iseult et a les heirs Iseult etc. .x.li. de annuele rente a paier a .ij. termes etc. et obliga li et ces heirs et totes ces terres en tiel ville a lour destresce issint qeloure etc. en qi mayns etc.⁴ Et pur ceo qe .C.s. de les .x.li. de lan qarte furent erere etc. si auowe ele etc. et de ceo myt auaut fet.

Denom. Nous fesoms protestacioun qe nous ne grauntoms poynt le fet etc. et demandoms iugement de ceste auowere qe Iseult est mesme seisi de la moite des tenementz dount ele demande ceste rente en noun de dowere par qi pour lentier ne put ele auowere fere.

Frisk. Nous auoms auowe pur .C.s. qe arere nous sount de .x.li. par qi autre auowere ne poms auer qe vous ne dedites poynt qe les tenementz ne sount chargez iugement.

Scrop. Vous ne dedites poynt qe vous nestes mesme seisi de la moiete des tenementz et vous supposez qe la rente de .x.li. est douwe et issi biet⁵ a recouer la rente de nous due des tenementz qe vous mesme tenez par qi vostre auowerie est mauveys mes fetes vous bon auowere et nous vous respoundroms assetz.

Berr. Il ad auowe pur les .C.s. de les .x.li. et qant il fra auowere pur les .C.s. dites qe vous dites ore Dautre part ou vn tenement est charge et deuynt en plusours mayns par feffement chescun parcele est charge delentier issint put homme destreindre en chescune parcele qe homme veot pur lentier.

Denom. ⁶En cas ou homme put auowerer sil seit seisi sil seit disseisi ⁷il pourra porter⁸ lassise et sil entrelesse ascun parcele de terre en sa pleynte sa pleyngte est nule auxi en⁹ auowere desicom ele mesme seisi de la moite de tenementz¹⁰ et il entrelesse en lauowere la charge de a parcele des tenementz¹¹ dount ele est seisi demandoms iugement de sauowere. Et daltrepart il nest pas semblable ou la terre charge deuynt en plusours mayns descharges et la ou cely qe doit auer a rente ad purchace parcele de la terre qest tenuz de ly et pus le seignour auowe pur lentier des seruices et le tenaunt die qil ad purchace

¹ Text of (IV) from *D* (second version), collated with *B* and *C*. ²⁻³ *B* and *C* omit. ⁴ *B* and *C* add dount le leu etc. ⁵ biez vous, *B*, *C*. ⁶⁻⁷ *B* and *C* omit. ⁷⁻⁸ portera, *C*. ⁹ vne, *C*; en vn, *B*. ¹⁰⁻¹¹ *B* and *C* omit.

IV.

John the Cooper complaineth that Isoud that was the wife of Richard Elegod wrongfully took his mare.

Ingham avowed by reason that Richard Davy was seised of a messuage and of a carucate of land etc., of which the place etc., and granted to Richard Elegod and to this Isoud and to the heirs of Isoud etc. ten pounds of yearly rent to be paid at two terms etc. and bound himself and his heirs and all his lands in such a vill to their distress so that whenever etc. in whose hands soever etc. And because a hundred shillings of the ten pounds for the fourth year were in arrear etc., Isoud avoweth etc., and thereof he maketh tender of a deed.

Denham. We make protestation that we did not make the deed etc., and we ask judgment of this avowry, for Isoud herself is seised, in name of dower, of a moiety of the tenements whereout she claimeth this rent, and therefore she cannot avow in respect of the entirety.

Friskenev. We have avowed for the hundred shillings that are in arrear to us of the ten pounds. Other avowry we could not have in the circumstances, for you do not deny that the tenements are charged. Judgment.

Scrope. You do not deny that you yourselves are seised of a moiety of the tenements, and you suppose that a rent of ten pounds is due, and so you are trying to recover from us the rent due from tenements which you yourself hold; wherefore your avowry is bad. But make you a good avowry and we will give you answer enough.

BEREFORD C.J. He hath avowed for a hundred shillings of the ten pounds. When he shall avow for the [other] hundred shillings say what you are saying now. Besides, where a tenement is charged and cometh by feoffment into the hands of divers people, each parcel is charged with the whole amount, to the effect that a man may distrain for the whole in any parcel that it liketh him.

Denham. Where a man, if he be seised, can avow, he can, if he be disseised, bring his assize, and if he omit to mention in his plaint any parcel of the land his plaint will be bad. So in avowry. Since Isoud herself is seised of a moiety of the tenements, and he¹ omitteth from his avowry the charge upon the parcel of the tenements of which she is seised, we ask judgment of his avowry. And again there is no resemblance between the case of land that is charged coming into divers hands that are chargeable and the case of one to whom the rent is due purchasing a parcel of the land held of him and then avowing, as lord, for the whole of the services, and the tenant saying that he hath

¹ i.e. Isoud's counsel.

partie des tenementz chargez de seruices ¹car il ne put auer la terre et la rente.

Berr. Si vn seignur purchase parcele de la terre qest tenuz de ly et pus le seignour auowe pur lentier des seruices et le tenant die qil ad purchace partie des tenementz chargez des seruices² iugement si pur les seruices entier puysetz auowere fere entendet vous par tant abatre lauowere quod non diceret³ mes il pourra descharger des partie des seruices pur la porcioun etc. et si respounetz du remenaunt etc.

Pass. En ceo le tenaunt oustera le seignour enterement de lauowere pur seruices nynt departables come soute etc. et pur les seruices departables il auowera pur la porcioun des seruices aferaunt a la partie de la terre qe le tenaunt ad retenuz en sa mayn et sic hic desicom il ad auowe pur rente charge qest departable ele mesme est seisi de la moiete de la terre etc. par qi pur lentier des seruices ne put ele auowere fere.

Berr. Ele aduowe pur .C.s. qe namounte qalamoite de .x.li. qar meillour auowere ne put ele fere.

Pass. En taunt com il dient qe les .x.li. furent arere il supposent qe les .x.li. furent dues et pur les .x.li. il vnt auowe ataunt com il reserue poer a eux a destreindre pur le remenaunt iugement etc.

Berr. Voletz autre chose dire.

Denom. Nous nauoms riens en les tenementz dount le leu⁴ etc. si noun du dreit nostre femme saunz qi nous ne pooms ceux tenementz charger ne descharger et prioms eyde de ly et habuit.

Et *Denom* pria qe ele fust somouns quod non conceditur sed quod habeat eam hic etc.

Et lauowere par *Berreford* fut agarde bone.

V.

NOTE.⁵

Nota la ou homage est dependaunt auxicome si vn homme tigne de moi vn maner par escuage si le maner soit deparcele par feffement et deuenu en diuers mains de chescune parcele iaueray homage qar chescune parcele veult escuage et per consequens homage qar si vne carue de terre qest tenu par fealte et par les seruices de .x.s. soit demembre vt supra chescun tenaunt solum sa porcioun fra la rente et fealte vnquore auaunt qe la terre fust deparcele ne fust mes vne fealte due pur ceo qe rente naturelment accret a li fealte et auxi escuage accret a ly homage.

¹⁻² Supplied from *B* and *C*; *D* omits. ³ *diceret* supplied from *B* and *C*; *D* omits. ⁴ *vewe*, *B*, *C*. ⁵ Note from *P*.

purchased a parcel of the tenements charged with the services ; for he cannot have both land and rent.

BEREFORD C.J. If a lord purchase parcel of the land that is held of him and the lord then avow for the whole of the services and the tenant say that the lord hath purchased a parcel of the tenements charged with the services [and asketh] judgment whether you can make avowry for the whole of the services, do you think that in this way you are going to abate avowry ? No. He can discharge a parcel of the services by apportionment etc. ; and so answer in respect of the residue etc.

Passeley. In that case the tenant will wholly oust the lord from avowing for services that are not partible, such as suit etc. ; and for services that are partible he will avow for such portion of the services as is assessed upon the parcel of the land which the tenant hath kept in his hand. And so here, since he hath avowed for a rent charge which is partible, and Isoud herself is seised of a moiety of the land etc. ; wherefore she cannot make avowry for the whole of the services.

BEREFORD C.J. She avoweth for a hundred shillings, which amounteth to no more than the moiety of ten pounds, for no better avowry can she make.

Passeley. Inasmuch as they say that the ten pounds were in arrear they are supposing that the ten pounds were due, and for the ten pounds they have avowed, seeing that they reserve power to themselves to distrain for the residue. Judgment etc.

BEREFORD C.J. Do you want to say aught else ?

Denham. We have naught in the tenements of which the place etc. save in right of our wife, without whom we can neither charge nor discharge these tenements, and we pray aid of her—and he had it.

And *Denham* prayed that she might be summoned, but this was not granted, but the order was that ' he is to have her here etc. ' ¹

And the avowry was ruled good by BEREFORD C.J.

V.

NOTE.

Where homage is dependant, as where a man holdeth a manor of me by escuage, if the manor be parcelled by feoffment and come into divers hands, I shall have homage of each parcel, for each parcel supposeth escuage and, consequently, homage. For if a carucate of land that is held by fealty and by the services of ten shillings be parcelled as above each tenant shall render rent and fealty according to his holding, though before the land was parcelled there was only a single fealty due, and the reason of this is that rent naturally involves fealty and so doth escuage involve homage.

¹ Here do manuscripts *B*, *C*, and *D* say what is not true, *teste rotulo*. See also pp. 91, 92, and 94 above.

VI.

NOTE.¹

Replegiare ou chescun defendant fut chasce dauower seueralment par Berreford.

En vn plee de prise des auers ou il auoient .iiij. defendants qe vindrent en court et vn² voleit auower pur ly et pur les altres qe furent en court et ne poeit estre resceu qar *Berreford* chasa chescun a respoudre seueralment et chescun fesoit seueral auowere.³

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 203, Norfolk.

Isabella que fuit vxor Ricardi Delegold de Suthbergh attachiata fuit per breue de Iudicio ad respondendum Iohanni le Coupere de Craneworth de placito quare cepit quendam equum ipsius Iohannis et eum iniuste detinuit contra vadium et plegios etc. per vnum breue. Eadem Isabella summonita fuit ad respondendum predicto Iohanni de placito quare cepit quoddam Iumentum ipsius Iohannis et illud iniuste detinuit contra vadium et plegios etc. Et vnde idem Iohannes dicit quod predicta Isabella Die Iouis proxima post festum sancti Gregorii Pape anno regni domini Regis nunc tercio in villa de Suthbergh in quodam loco qui vocatur Ridecroft cepit predictum equum predicti Iohannis Et eciam die veneris proxima post festum Inuencionis Sancte Crucis anno regni domini Regis nunc quarto in villa de Suthbergh in quodam loco qui vocatur Bromhill cepit predictum Iumentum ipsius Iohannis Et ea iniuste detinuit contra vadium et plegios quousque etc. vnde dicit quod deterioratus est et dampnum habet ad valenciam centum solidorum Et inde producit sectam etc.

Et Isabella venit et defendit vim et iniuriam quando etc. Et bene aduocat predictas capciones et iustas etc. Dicit enim quod quidam Ricardus Dauy de parua kerbroke obligauit se teneri predicto Ricardo Delegold quondam viro predictae Isabelle et eidem Isabelle et heredibus ipsius Isabelle in decem libris annui redditus soluendis eisdem Ricardo Delegold et Isabelle et heredibus ipsius Isabelle ad Pascham pro terris et tenementis scilicet pro vno messuagio viginti et quatuor acris terre sex acris prati sex acris bosci et octo solidatis redditus cum pertinenciis in villis de Suthbergh et Woderising que idem Ricardus ei dedit et in seisina posuit etc. Ad cuius solutionem idem Ricardus Dauy obligauit se et heredes suos et omnes predictas terras et tenementa ad quorumcumque manus deuenierint districcioni

¹ Noted by *M* and *P*. Text from *P* collated with *M*. The note in *M* is simply 'Replegiare.'
² *M* omits.
³ *M* adds etc.

VI.

NOTE.

In a writ of replevin it was ruled by BEREฟอร์ด C.J. that each defendant must avow severally.

In a plea for seizure of cattle there were four defendants who all appeared in Court. One of them wished to avow both for himself and for his co-defendants who were present in Court ; but he was not allowed to do this, because BEREฟอร์ด C.J. ruled that each defendant must answer severally: Thereupon each of them made his several avowry.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 203, Norfolk.

Isoud that was wife of Richard Delegold of Sudbury was attached by a judicial writ to answer John the Cooper of Cranworth under one writ¹ of a plea why she took a certain horse, the property of the same John, and it did unjustly detain against gage and pledges etc. The same Isoud was summoned [under another writ] to answer the aforesaid John of a plea why she took a certain mare, the property of the same John, and it did unjustly detain against gage and pledge etc. And thereof the same John doth say that the aforesaid Isoud upon the Thursday next after the Feast² of St. Gregory the Pope in the third year of the reign of the lord King that now is, in the vill of Sudbury, in a certain place that is called Ridecroft, the aforesaid horse, the property of the said John, did take ; and further on the Friday next after the Feast³ of the Invention of the Holy Cross in the fourth year of the reign of the lord King that now is, in the vill of Sudbury, in a certain place that is called Bromhill, the aforesaid mare, the property of the aforesaid John, did take, and them did unjustly detain against gage and pledges until etc., whereby he doth say that he hath suffered loss and hath damage to the amount of a hundred shillings ; and thereof he doth produce suit etc.

And Isoud doth come and doth deny force and injury when etc. And she doth well avow the aforesaid seizures as just etc. For she saith that a certain Richard Davy of Little Carbrooke bound himself to be held to the aforesaid Richard Delegold, aforetime husband of the aforesaid Isoud, and to the same Isoud and to the heirs of that Isoud in ten pounds of yearly rent to be paid to the same Richard Delegold and Isoud and the heirs of that Isoud at Easter for lands and tenements, to wit, for a messuage, four and twenty acres of land, six acres of meadow, six acres of wood, and a rent of eight shillings, together with the appurtenances, in the vills of Sudbury and Wood Rising,⁴ which the same Richard gave to him and did put him in seisin thereof etc. And to the payment of this the same Richard Davy bound himself and his heirs and all the aforesaid lands and tenements, into whose hands soever they should come, to the distrainment of the aforesaid Richard and

¹ There was a second writ in respect of the seizure of a mare.

² March 12.

³ May 3.

⁴ Sudbury is in Suffolk, 21 miles W. by S. of Ipswich. Wood Rising is in Norfolk, near the Suffolk boundary.

Note from the Record—*continued*.

predictorum Ricardi et Isabelle vxoris eius et heredum ipsius Isabelle Et profert quoddam scriptum sub nomine predicti Ricardi Daury quod idem hoc testatur cuius Datum est apud Suthbergh Die Lune proximo post Epiphaniam domini anno regni Regis Edwardi patris domini Regis nunc Tricesimo quarto Et quia predictae decem libre ad festum Pasche anno predicti Regis Edwardi patris etc. Tricesimo quarto ei aretro fuerunt die capcionis predicti Equi cepit ipsa equum illum pro centum solidis de predictis decem libris in predicto loco de Ridecroft qui est parcella de predictis tenementis oneratis etc. Et quia decem Libre de termino Pasche anno predicti Regis Edwardi patris etc. Tricesimo quinto ei aretro fuerunt die capcionis predicti Iumentum cepit ipsa Iumentum illud pro centum solidis de predictis decem libris in predicto loco qui est parcella tenementorum oneratorum sicut ei bene licuit.

Et Iohannes dicit quod ipse tenet medietatem predictorum tenementorum tantum que predicta Isabella aserit per aduocationem suam esse onerata vt de Iure cuiusdam Margarete vxoris ipsius Iohannis sine qua non potest rem istam deducere in Iudicium etc. Ideo ipsa summoneatur quod sit hic in Crastino Sancti Iohannis Baptiste ad respondendum simul etc.

Postea continuato processu vsque ad hunc diem scilicet a die Pasche in vnum mensem anno regni Regis nunc sexto venerunt predicti Isabella et Iohannes per attornatos suos Et similiter predicta Margareta per Nicholaum de Reyueristone attornatum suum et iunxit se predicto Iohanni in respondendo etc. Et iidem Iohannes et Margareta dicunt quod predicta Isabella nichil clamare potest in predicto annuo redditu per factum predicti Ricardi Daury quia dicunt quod predictus Ricardus nunquam fuit seisisus de predictis tenementis vt de feodo etc. Ita quod tenementa illa in predicto annuo redditu onerare potuit Et de hoc ponunt se super patriam Et Isabella similiter Ideo preceptum est vicecomiti quod venire faciat hic a die Sancti Michaelis in tres septimanas xij. etc. per quos etc. Et qui nec etc. quia tam etc.

18. DRINKSTONE v. THE PRIORESS DE MARKEYATE AND LANGELESUME.¹I.²

Replegiare.

Vn A. se pleint qe la Prioress de Margate atort prist ses auers etc.

Denom. ³La Prioress auowe etc. et par la raison qe vn eustas de Iming⁴ graunta a vn Angneis predecessour etc. vn demi marc de

¹ Reported by *M*, *P*, *T*, *Y*. Names of the parties from the Record.

² Text of (1) from *M*, collated with *P* and *T*.

³⁻⁴ auowe la prise etc. par la resoun qe vn Eustace de Dimge, *T*, *P*.

Note from the Record—*continued*.

Isoud his wife and the heirs of this Isoud. And she maketh *profert* of a certain writing in the name of the aforesaid Richard Davy which witnesseth this same, and it is dated at Sudbury on the Monday next after the Epiphany of Our Lord in the thirty-fourth year of the reign of King Edward, father of the lord King that now is. And for that the aforesaid ten pounds due at the Feast of Easter in the thirty-fourth year of the aforesaid King Edward, father etc., were in arrear on the day of the seizure of the aforesaid horse, she did take that horse for a hundred shillings of the aforesaid ten pounds in the aforesaid place of Ridecroft, which is a parcel of the aforesaid tenements charged etc. And for that ten pounds due at Easter in the thirty-fifth year of the aforesaid King Edward, father etc., were in arrear on the day of the aforesaid seizure she did take that mare for a hundred shillings of the aforesaid ten pounds in the aforesaid place, which is a parcel of the tenements charged, as she was well entitled to do.

And John doth say that he doth hold but half only of the aforesaid tenements, the which the aforesaid Isoud doth in her pleading allege to be charged, in right of a certain Margery, wife of this same John, without whom he cannot bring this matter into judgment. So she is to be summoned to be here on the Morrow¹ of St. John the Baptist to answer together with etc.

Process being afterwards continued to this present day, to wit, a month from Easter in the sixth year of the reign of the King that now is, the aforesaid Isoud and John came by their attorneys, and likewise did the aforesaid Margery by Nicholas of Reymurston, her attorney, and joined herself to the aforesaid John in answering etc. And the same John and Margery do say that the aforesaid Isoud can claim naught in the aforesaid yearly rent by the deed of the aforesaid Richard Davy, because they say that the aforesaid Richard was never seised of the aforesaid tenements as of fee etc., so that he could charge those tenements with the aforesaid yearly rent. And of this they do put themselves on the country. And Isoud doth the like. So the Sheriff hath it in charge that he make to come here three weeks after Michaelmas twelve etc. by whom etc. and who shall be neither etc.; for both etc.

18. DRINKSTONE *v.* THE PRIORESS OF MARKEYATE² AND LANGELSUME.

I.

Replevin.

One A. complaineth that the Prioress of Markeyate hath wrongfully taken her beasts etc.

Denham. The Prioress avoweth etc. and because one Eustace of Dunning³ granted to one Agnes, predecessor etc., a half mark of yearly

¹ June 25.

³ Corrected from the Record.

² Now Market Street, in Bedfordshire.

Annuele Rente a receuire de touz ceuz tenements en tiel Counte dount le leu etc. est parcele a paier aly et a tous ses successeurs a touz iours et obliga tous ses terres in eodem Comitatu ¹a la destresce etc. en qi mayne etc. dount la dite Agnes fut seisi etc. vn Isoud predecessor etc. par my la mayn le dit Eustace² Et pur ceo qe demi marc feut arrere etc.

Hedoun. La parole est remue ceinz a la suite le defendant et par cause quia predicta Priorissa distrinxit in feodo suo pro consuetudinibus et seruiciis etc. et il ount auowe pur vne rente charge qest contrariaunt a la cause iugement del auowere.

Berr. La parole est venue ceinz et ceo qe vous dites nest forsque a remeindre³ la parole en Counte et ceo ne froms⁴ point.

Hedoun. Ceste cause est done par statut⁵ tantum entre seigneur destreinde pur custumes ⁶et seruices⁷ aly dues et soun tenant et del hure qe il auowe pur autre chose etc. ne il ne suppose par sa auowere estre seigneur ne nous soun tenant par qi nentendoms point qe cesti bref pout estre garranti alauowere etc.

Berr. noluit allocare raciones.

Hedoun. A. nad rien en les tenements dount le leu ou la prise etc. si noun com de dreit G. sa femme et prie eyde de ly.

Et habuit etc.

II.⁸

Replegiare ou la parole fut remue quia distrinxit in feodo pro seruiciis etc. et lauowere fut fete pur Rente charge et stetit aduocacio per *Bereford* etc.

Willelmus de Drunistone se pleint qe la Prioress de Merkate qe atort auoit pris ces auers.

Denom. La Prioress auowe ceste prise par la resoun qe Eustace Doning graunta et pur lui et pur ses heirs se obliga estre tenuz a la Prioress de Merkgate et as noneignes illukes dieu seruantz en vn demi mark de annuele Rente scilicet .xl. deners al hokeday et .xl. deners a la seint Michel de quel demi mark de annuele Rente vne M. Iadis Prioress predecessere etc. fu seisi ⁹de cele demi Mark de annuele rente¹⁰ et vne Isoud Prioress et S. Prioress. Et estre ceo graunta qe quel houre qe cele Rente fut arere bien lureit a la Prioress et ses suites distreyndre en touz les tenementz le dit Eustace en le Conte de grante-

¹⁻² Added from *P* and *T*. ³ remaunder, *P*, *T*. ⁴ froumezc, *T*. ⁵ Statute of Westminster II. cap. ii. ⁶⁻⁷ Added from *P* and *T*. ⁸ Text of (II) from *Y*. ⁹⁻¹⁰ These words are a mere repetition.

rent from all those tenements in that county, of which the place etc. is parcel, to be paid to her and to all her successors for ever, and did bind all his lands in the same county to the distraint etc. in whose hands etc. of which the said Agnes was seised etc. and one Isoud predecessor etc. by the hand of the said Eustace. And for that half a mark was in arrear etc.

Hedon. The hearing is removed into this court at the suit of the defendant. The cause of action is that the aforesaid Prioress distrained in her fee for customs and services etc., while she hath avowed for a rent charge, which is wholly different from the cause of action. Judgment of the avowry.

BEREFORD C.J. The hearing is removed here, and what you say has no purpose except to remit the case back to the County Court, and we shall not do that.

Hedon. This cause of action is given by statute¹ only between a lord and his tenant, enabling the lord to distrain for customs and services due to him; and since the defendant avoweth for other reason etc. and doth not claim in her avowry to be lord, nor that we are her tenant, we submit that the avowry is not maintainable under this writ.

BEREFORD C.J. would not allow this argument.

Hedon. A. hath naught in the tenements, of which the place where the seizure etc. except in right of G. his wife, and he prayeth aid of her.

And he had it etc.

II.

Replevin, where the hearing was removed [from the County Court into the Bench]. The writ complained that the defendant had distrained in her fee for customs and services, while the avowry was made for rent charge. The plaintiff's voucher of his wife is allowed by BEREFORD C.J.

William of Drinkstone complaineth that the Prioress of Markeyate hath wrongfully seized his beasts.

Denham. The Prioress avoweth this seizure for that Eustace Dunning granted and for himself and his heirs did bind himself to be holden to the Prioress of Markeyate and to the nuns there serving God in half a mark of yearly rent, to wit, forty pence on Hock Day and forty pence at Michaelmas; of which half mark of yearly rent one M. that was aforetime Prioress, predecessor etc., was seised, and also one Isoud, Prioress, and one S., Prioress: And Eustace further granted that whenever this rent was in arrear the Prioress and her successors should be entitled to distrain in all the tenements of the said Eustace within

¹ Statute of Westminster II. cap. ii.

brigge dount le lieu ou la prise fut fete en est parcele. Et pur ceo qe la Rente fut arrere .xl. anz le ior de la prise si auowe ele ceste prise pur vn demi mark del an le Roy Edward pere nostre seignur etc. .ij.^o et pur demi marc del an .iiij.^o mesme celui Roy et mist a la Court la chartre Eustace qe ceo testmoigne.

Hedoun. Ceste parole si est remue hors du Conte par cause a la suite la Prioress le quel bref dit *quia distrinxit in feodo suo pro seruiciis* etc. et il ont auowe pur rente charge qe nest pas seruice iugement etc.

Hle. Vous ne respounetz nent a nostre auowement nous prioms return des auers.

Hedoun. Vous poez auer bref acordant a vostre cas *quia distrinxit in terris et tenementis sibi obligatis* etc. et ceo poez vere cienz en mesme ceste terme entre Iohan le Couper de Cranford [*sic*] et Isould qe fu femme Richard Ilgold etc.¹

Hle. Assez est il mon fee la ou Ieo puisse distreyndre.

Ber a Hedoun. A vostre auantage si est la parole remue et vostre excepcion se tendroit lieu sil eussont auowe en le counte autrement qil ne fut ore qar le counte si est la court Roy. Et Ieo vous face bien a sauuer qe le visconte nad nent plus de poer de trier les causes des brefs qe Ieo nay poer de chaunter vne messe.

Hedoun. Nous auom veu en tieu cas damages estre agarde.

Ber. Vous nel verrez iames tank com Ieo sui icy.

Ber. Si nous agardisoms damages sur queu point se foundereit nostre iugement par dieu vous ne poez mie dire qil est noun defendu etc.

Hedoun. Les tenementz en les queux ele auowe ceste prise si est le dreit nostre femme et prioms aide et habuit.

Rotheley. Suyez bref de fere sumoundre vostre femme etc.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 176d., Cambridgeshire.

Priorissa de Markeyate et Alexander de Langelesume fuerunt [summoniti] ad respondendum Willelmo de Drynkastone de placito quare ceperunt aueria ipsius Willelmi et ea iniuste detinuerunt contra vadium etc. Et vnde predictus Willelmus per attornatum suum dicit quod predicti Priorissa et

¹ See p. 84 above.

the county of Cambridge, of which the place where the seizure was made is parcel. And, because the rent had been in arrear for forty years on the day of the seizure, the Prioress avoweth this seizure for half a mark due in the second year of King Edward, father of our lord etc., and for half a mark due in the third year of that same King; and she made *profert* to the Court of the charter of Eustace that witnessed the premises.

Hedon. The hearing of this case hath been removed from the County Court at the suit of the Prioress. The writ runs 'because she hath distrained on her fee for services etc.,' and avowry is made for a rent charge, which is not a service. Judgment etc.

Herle. You answer naught to our avowry. We pray return of the beasts.

Hedon. You can have a writ that is accordant with the circumstances of your complaint, running that 'she distrained in lands and tenements charged to her etc.,' and you had an example of this in this court this very term in the action between John the Cooper of Cranford and Isoud that was wife of Richard Delegold etc.¹

Herle. That is sufficiently my fee if I can distrain there.

BEREFORD C.J. to *Hedon.* It is to your advantage that the hearing hath been removed; and your exception would have been maintainable if they had avowed in the County Court, otherwise than they have done now; for the County Court is the King's Court. And I would have you know that the Sheriff hath no more authority to try causes by writ than I have to sing a mass.

Hedon. We have seen damages awarded in similar circumstances.

BEREFORD C.J. You will never see them so long as I am here.

BEREFORD C.J. Were we to award damages, on what matter should we base our judgment? *Par dieu*, you are not going to tell me that the case is undefended etc.

Hedon. The tenements in which the Prioress avoweth this seizure are the right of our wife, and we pray aid of her—and he had it.

——² Sue out a writ to have your wife summoned etc.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 176d., Cambridgeshire.

The Prioress of Markeyate and Alexander of Langelesume were summoned to answer William of Drinkstone of a plea why they took the beasts of the said William and unjustly did detain them against gage etc. And thereof the aforesaid William by his attorney doth say that the aforesaid Prioress

¹ See p. 84 above.

² See the *Introduction*, pp. xlvii., xlviii.

Note from the Record—continued.

Alexander die Martis proximo post festum Sancti Gregorii Pape anno regni domini Regis nunc quarto in villa de Gamelyngeye in quodam loco qui vocatur Shertestokyng ceperunt duos equos ipsius Willelmi et eos iniuste detinuerunt contra vadium etc. quousque etc. vnde dicit quod deterioratus est et dampnum habet ad valenciam quadraginta solidorum. Et inde producit sectam etc.

Et Priorissa et Alexander per attornatum suum veniunt. Et predicta Priorissa respondet pro se et pro predicto Alexandro. Et bene aduocat predictam capcionem et iuste etc. Dicit enim quod locus in quo etc. Simul cum aliis tenementis in eodem Comitatu aliquando fuerunt in seisina cuiusdam Eustachii Dunnyng de Cantebori qui quidem Eustachius per scriptum suum concessit pro se et heredibus suis cuidam Iohanne de la Sarette quondam Priorisse de Markyate predecessori etc. et monialibus Sancte Trinitatis de Bosco iuxta Markiate et successoribus suis quemdam annum redditum sex solidorum et octo denariorum percipiendum de terris et tenementis ipsius Eustachii in Comitatu predicto ad duos terminos etc. videlicet vnam medietatem ad le hokeday et aliam medietatem ad festum Sancti Michaelis etc. De quo quidem redditu predicta Iohanna predecessor etc. fuit seisita per manus predicti Eustachii de predictis tenementis etc. et similiter quedam Agnes Cobyoun quondam Priorissa etc. predecessor etc. seisita fuit per manus eiusdem Eustachii etc. Et quia predictus redditus eidem Priorisse aretro fuit per quadraginta annos ante diem capcionis etc. distrinxit ipsa in predicto loco de Shertestoking qui est pars tenementorum que fuerunt ipsius Eustachii oneratorum de predicto redditu etc. et cepit vnum equum pro dimidia marca de anno regni Regis Edwardi patris domini Regis nunc secundo et alium equum pro alia dimidia marca de anno eiusdem Regis patris etc. tercio in loco predicto qui est pars etc. vt predictum est. Et profert predictum scriptum ipsius Eustachii quod predictam concessionem testatur etc. et quod idem Eustachius obligauit terras et tenementa sua ad districcionem ipsius Priorisse et successorum suorum Priorissarum etc. quociens predictus redditus aretro fuerit etc.

Et Willelmus dicit quod ipse tenet tenementa vnde predictus locus in quo etc. est parcella vt de iure Marie vxoris ipsius Willelmi sine qua non potest rem istam ducere in Iudicium etc. Et petit auxilium etc. Ideo ipsa summonetur quod sit hic a die Pasche in tres septimanas ad respondendum simul etc. Postea continuato concessu [*sic*] hinc inde vsque a die Sancti Michaelis in xv. dies anno Regni Regis nunc sexto venerunt tam predicta Priorissa quam predictus Willelmus per attornatos suos et similiter predicta Maria in propria persona sua que se iungit predicto Willelmo viro suo in

Note from the Record—*continued*.

and Alexander on the Tuesday next after the Feast ¹ of St. Gregory the Pope in the fourth year of the reign of the King that now is in the vill of Gamlinghay,² in a certain place called Shertestokyng, two horses, the property of this same William, did take and them did unjustly detain against gage etc., until etc., whereby he doth say that he hath suffered loss and hath damage to the amount of forty shillings. And he produceth suit thereof etc.

And the Prioress and Alexander do come by their attorney; and the aforesaid Prioress doth answer for herself and for the aforesaid Alexander. And she doth avow the aforesaid seizure, and justly etc. For she saith that the place in which etc., together with other tenements in the same county were at one time in the seisin of a certain Eustace Dunning of Canterbury, the which Eustace did by his writing grant for himself and his heirs to a certain Joan of Sarratt that was aforetime Prioress of Markeyate,³ predecessor etc., and to the Nuns of the Holy Trinity of the Wood near Markeyate and to their successors a certain yearly rent of six shillings and eight pence to be received from the lands and tenements of this same Eustace in the aforesaid county at two terms etc., to wit, one moiety at the Hock Day and the other moiety at the Feast of St. Michael etc. And of this rent the aforesaid Joan, predecessor etc., was seised by the hands of the aforesaid Eustace as issuing from the aforesaid tenements etc.; and similarly a certain Agnes Cobyoun,⁴ aforetime Prioress etc., predecessor etc., was seised by the hands of the same Eustace etc. And because the aforesaid rent was in arrear for forty years to the same Prioress before the day of the seizure, she did distrain in the aforesaid place of Shertestoking, which is parcel of the tenements of that Eustace that were charged with the rent aforesaid etc., and she did take one horse for the half mark of the second year of the reign of King Edward, father of the lord King that now is, and another horse for another half mark of the third year of the same King, father etc., in the aforesaid place that is parcel etc., as is aforesaid. And she maketh *profert* of the aforesaid writing of the same Eustace which witnesseth the aforesaid grant etc., and that the same Eustace did bind his lands and tenements to the distrainment of the said Prioress and her successors, Prioresses etc., as often as the said rent should be in arrear etc.

And William saith that he doth hold the tenements of which the aforesaid place in which etc. is parcel, as of the right of Mary, wife of this William without whom he cannot bring this matter into judgment etc. And he prayeth aid etc. So Mary is to be summoned that she be here three weeks past Easter to answer together with etc. Process being continued up to a fortnight past Michaelmas in the sixth year of the reign of the King that now is, both the aforesaid Prioress and the aforesaid William did come by their attorneys, and the aforesaid Mary came likewise in person and joined herself to the aforesaid William her husband in making answer. And they say

¹ March 12.

² Gamlinghay is 14½ miles W. by S. of Cambridge.

³ She was elected Prioress in 1239.

⁴ Agnes Cobyoun or Gobyoun was Prioress about 1270. She was next in succession to Joan of Sarratt.

Note from the Record—*continued*.

respondendo Et dicunt quod sexcies viginti acre terre cum pertinenciis in Gameleye vnde predictus locus est parcella etc. quondam fuerunt in seisina predicti Eustachii Dunnyng qui tenementa illa dedit quibusdam Ricardo Dunnyng et Iohanne vxori eius tenenda ipsis Ricardo et Iohanne et heredibus de corporibus suis exeuntibus qui inde obierunt seisiti post quorum mortem predicta Maria et quedam Iohanna vxor cuiusdam Hamonis de Crandone successerunt ipsis Ricardo et Iohanne vxori eius vt filie et heredes etc. Inter quas predicta tenementa sunt partita etc. Ita quod tenementa ista vnde predictus locus est parcella contingebant ipsam Mariam in purpartem etc. vnde dicit quod ipsi non possunt inde sine predictis Hamone et Iohanna vxore eius respondere. Et petunt auxilium de ipsis Hamone et Iohanna vxore eius Et Priorissa non potest hoc dedicere Ideo ipsi summoneantur quod sint hic a die Sancti Hillarii in xv. dies ad respondendum simul etc. Et predicta Maria ponit loco suo Petrum de Dullingham vel Iohannem Sewale etc. Postea continuato processu hinc inde vsque a die Sancte Trinitatis in xv. dies anno regni Regis nunc sexto veniunt tam predicta Priorissa per attornatum suum quam predicti Willelmus et Maria per attornatos suos Et predicti Hamo et Iohanna non veniunt Et habuerunt diem per essoniatos suos hic ad hunc diem Postquam summoniti etc. Ideo predicti Willelmus et Maria respondeant sine etc. Et iidem Willelmus et Maria respondent vltorius Et dicunt quod predicta Priorissa predictam capcionem iustam aduocare non possunt [*sic*] in predicto loco etc. pro predicto redditu etc. Quia dicunt quod sexaginta acre terre de predictis sexcies viginti acris terre vnde predictus locus est parcella et quas quidem sexaginta acras terre ipsi modo tenent non fuerunt in seisina predicti Eustachii tempore quo idem Eustachius obligauit terras et tenementa sua predicta districcioni predictae Priorisse etc. pro predicto redditu etc. Et hoc parati sunt verificare etc.

Et Priorissa dicit quod predicta tenementa que predicti Willelmus et Maria modo tenent vnde predictus locus in quo etc. est parcella fuit [*sic*] in seisina predicti Eustachii tempore confeccionis predicti scripti etc. Et hoc petit quod inquiratur per patriam Et Willelmus et Maria similiter Ideo preceptum est vicecomiti quod venire faciat hic in Crastino Sancti Martini xij. etc. per quos etc. Et qui nec etc. ad recognizandum etc. Quia tam etc.

19. HUSE v. COGAN.¹

De feriis ou dit fut qe le bref fut nouel et nent meyntenable.

Mester Roger persone de Eglise de Bautone porta son bref de nusance deuers Roger Cogan et counta qe atort ly desturbe de auer

¹ Reported by *G* only. Names of the parties from the Record.

Note from the Record—*continued.*

that six score acres of land with the appurtenances in Gamlinghay, of which the aforesaid place is parcel etc., were aforesaid in the seisin of the aforesaid Eustace Dunning who gave those tenements to a certain Richard Dunning and Joan his wife, to hold to the same Richard and Joan and the heirs of their bodies issuing and these died seised thereof; and after their death the aforesaid Mary and a certain Joan that was wife of one Hamon of Crandon succeeded to this Richard and Joan his wife as daughters and heirs etc., and the aforesaid tenements were parcelled between them in such way that those tenements of which the aforesaid place is parcel were allotted to this Mary as her share etc.; wherefore she saith that they cannot answer in respect of them without the aforesaid Hamon and Joan his wife. And they ask aid of the same Hamon and Joan his wife. And the Prioress cannot deny this. So they are to be summoned to be here a fortnight after St. Hilary's Day to answer together with etc. And the aforesaid Mary doth put in her place Piers of Dullingham or John Sewell etc. Process being subsequently continued up to a fortnight past the Day of the Holy Trinity in the sixth year of the King that now is, there come as well the aforesaid Prioress, by her attorney, as the aforesaid William and Mary, by their attorneys. And the aforesaid Hamon and Joan do not come. And they were essoined until this day. Afterwards they were summoned etc. So the aforesaid William and Mary are to answer without etc. And the same William and Mary answer over and say that the aforesaid Prioress cannot avow as just the aforesaid seizure in the aforesaid place etc., for the aforesaid rent etc.; for they say that of the aforesaid six score acres of land, sixty acres, of which the aforesaid place is parcel, and which said sixty acres of land they do hold, were not in the seisin of the aforesaid Eustace at the time when the same Eustace did bind his lands and tenements aforesaid to the distrainment of the aforesaid Prioress etc. for the aforesaid rent etc. And this they offer to aver, etc.

And the Prioress doth say that the aforesaid tenements which the aforesaid William and Mary now hold, of which the aforesaid place in which etc. is parcel, were in the seisin of the aforesaid Eustace at the time of the making of the aforesaid writing etc. And she asketh that this be inquired of by the country. And William and Mary do the like. So the Sheriff hath it in charge to make to come here on the Morrow of St. Martin twelve etc. through whom etc., and who shall be neither etc. to make recognition etc.; for both etc.

19. HUSE *v.* COGAN.¹

Touching fairs; where it was said that the writ was new and could not be maintained.

Master Roger, parson of the church of Bampton,² brought his writ of nuisance against Roger Cogan, and counted that he doth wrongfully

¹ See the *Introduction*, p. xxxvii. of Tiverton. A member of the Cogan

² Bampton is some seven miles north family built a castle there in 1336.

Feyre en B. sicum auer deyt et ces predecessors auer soleynt scilicet .ij. feye [*sic*] par an a celez festez etc. dequale feyre son predecessor fut seisi com de fee et dreyt de sa Eglise et mesme cely Roger ly desturbe etc.

Scrop. A tel counte ne deit estre resceu qil ad counte de vne disturbance et ne assigne my la disturbance iugement.

Toud. Vous nous auet desturbe et vncore fetes. Car vous nous contrepledet. *Et dautre part* nous nauoms my counte par my damages par qi il ne couent nent assigner cause.

West. En vn quare impedit ieo ne assigneray nule cause de disturbance nent plus etc.

Scrop. Vncore demandoms iugement de counte qil ad counte qe son predecessor fut seisi com de fee et dreyt. Et persone de Eglise ne put auer qe a terme de vie iugement.

Toud. Nous auoms pursywy nostre bref.

Scrop. Vncore demandoms iugement de ceo counte il ad dit qe nous ly auoms desturbe et il ne ad my assigne en counte countant qil mesmes fut seisi de tele feyre iugement.

Berr. Ceo est vn nouel bref et mout merillous bref ieo ne meyntendra iames ceo bref etc.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 120, Devonshire.

Thomas Cogan summonitus fuit ad respondendum Rogero Huse persone ecclesie de Bauntone de placito quare cum idem Rogerus habere debeat et predecessores sui persone ecclesie predicte a tempore quo non extat memoria habere consueuerunt vnam feriam apud manerium ipsius persone de Bauntone singulis annis per tres dies duraturam videlicet in vigilia in die et in crastino Sancti Luce Ewangeliste et vnam aliam feriam ibidem singulis annis per tres dies duraturam videlicet die Martis in septimana Pentecoste et per duos dies sequentes predictus Thomas prefatum Rogerum quo minus ferias predictas habere possit sicut illas habere debet et predecessores sui predicti a tempore predicto illas habere consueuerunt minus iuste impedit etc. Et vnde idem Magister Rogerus per Iohannem le Pannier attornatum suum dicit quod quidam Osemundus quondam persona ecclesie de Bauntone predecessor ipsius Rogeri seisitus fuit de predictis feriis vt de Iure ecclesie sue predicte tempore domini Henrici Regis aui domini Regis nunc capiendo

disturb him from having fairs in Bampton as he ought to have and as his predecessors used to have, to wit two fairs every year, at these feasts etc. ; of which fairs his predecessor was seised as of fee in right of his church ; and this same Roger doth disturb him etc.

Scrope. He ought not to be received to such a count, for he hath counted of a disturbance and yet doth assign no disturbance. Judgment.

Toudeby. You have disturbed us, and you are still doing so, for you are pleading against us.¹ And, further, we have not asked for damages in our counting, and so there is no need to assign cause.

Westcote. In a *quare impedit* I shall assign no cause of disturbance ; and no more shall I here.

Scrope. Again we ask judgment of the count, for he hath counted that his predecessor was seised as of free and right ; but the parson of a church can have naught more than a life-term. Judgment.

Toudeby. We have prosecuted our writ.

Scrope. Again we ask judgment of this count. He hath said that we have disturbed him, and he hath not, in counting his count, said that he himself was seised of this fair. Judgment.

BEREFORD C.J. This is a new writ and a truly wonderful writ. Never will I uphold this writ etc.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 120, Devonshire.

Thomas Cogan was summoned to answer Roger Huse, parson of the church of Bampton, of a plea why, when the same Roger ought to have, and his predecessors, parsons of the aforesaid church have used to have from a time higher than memory, a fair in the manor of the said parson of Bampton every year, lasting through three days, to wit, the Eve and the Day and the Morrow of St. Luke the Evangelist, and another fair in the same place every year, lasting through three days, to wit, on the Tuesday in the week of Pentecost and the two days next following, the aforesaid Thomas doth unjustly impede the aforesaid Roger so that it is not possible for him to have the aforesaid fairs as he ought to have them and as his aforesaid predecessors have used to have them from the time aforesaid etc. And thereof the same Master Roger doth say by John the Panier, his attorney, that a certain Osmund, aforetime parson of the church of Bampton, a predecessor of this same Roger, was seised of the aforesaid fairs as of the right of his aforesaid church in the time of the lord Harry the King, grandfather of the lord King

¹ Similarly one who was found by assize to be no disseisor might become one by counterpleading to the plaintiff. See *Year Book Series*, viii. 94.

Note from the Record—*continued.*

inde explecias vt in tolnetis pikagiis et stallagiis et aliis etc. predictus Thomas ipsum Rogerum quominus ferias predictas habere possit sicut illas habere debet et predecessores sui etc. a tempore predicto habere consueuerunt minus iuste impedit etc. vnde dicit quod deterioratus est et dampnum habet ad valenciam Centum marcarum etc.

Et Thomas per Iohannem de Thenebregge attornatum suum venit Et defendit vim et iniuriam quando etc. Et dicit quod non debet ad hoc breue ad talem narrationem respondere Quia dicit quod cum idem Rogerus per breue suum supponit ipsum Thomam iniuste impediuisse ipsum Rogerum quo minus ferias predictas habere possit etc. Idem Rogerus per narrationem suam non allegat seu ostendit aliquod impedimentum quod idem Thomas ei fecisse debuit in hac parte vnde petit iudicium etc.

Dies datus est eis de audiendo iudicio hic a die sancte Trinitatis in xv. dies etc. Ad quem diem veniunt partes predictae per predictos attornatos suos Et dies datus est eis de audiendo [iudicio] suo hic in Crastino sancti Martini in eodem statu quo nunc etc.¹

20. MASON *v.* KING.²I.³

Entre sur disseisine vers femme tenant en dower ou ele fit defaute survynt le heir et pria estre resceu etc. ou dit fut qil fut hors de lez degrez etc. ou dit fut qe lentre fut maueys pur ceo qe ele dit qe ele entra par le heir le baroun ou ele entra par le baroun del assignement le heir casus patet in fine placiti.

Vn Robert porta son bref dentre foundu sur la nouele disseisine vers Margerie ⁴et dit⁵ en les quels nad entre si noun par Rauf de E. qe de ceo atort et saunz iugement disseisa son pere ⁶pusse la passage⁷ etc. Margerie fit defaute etc. par quei Robert demanda seisine de terre vint⁸ vn Geffray et dit qe ele tient en noun de dower de son heritage et pria destre resceu.

Clau. Vous ne deuez estre resceu Car vostre pere est hors de degrez ou si vous feussez resceu nostre bref serreit abatu ⁹par qi etc.¹⁰

Ing. Vn Ion nostre pere feut seisi etc. apres qi mort etc. entra vn

¹ Nothing further has been recorded.
X, Y. Names of the parties from the Record.

² Reported by B, C, M, P, T,

³ Text of (1) from M collated with B, C, P, T. Headnote from C. The note in B is:—Entre porte vers vn homme qe fist defaute et le bref fuist deinz les degrez et vn vint et pria destre resceu qe fust hors de degrez et il fut resceu vide casum in file [sic] placiti.

⁴⁻⁵ Added from T. ⁶⁻⁷ Added from T. ⁸ Suringt, B, C. ⁹⁻¹⁰ B, C, and T read as above. M and P are apparently corrupt; M reading: *Hedown* bassimile par qi etc. and P: *Hedon* liad si nul par qi etc.

Note from the Record—continued.

that now is, taking thence esplees, as in tolls, pickages,¹ and stallages² and other matters etc., and the aforesaid Thomas doth unjustly impede this same Roger so that he cannot have the fairs aforesaid as he ought to have them and as his predecessors etc. used to have them from the time aforesaid etc. And thereby he doth say that he hath suffered loss and hath damage to the amount of a hundred marks etc.

And Thomas cometh by John of Thencbregge, his attorney, and doth deny force and injury when etc. And he doth say that he ought not to answer this writ on such a counting; for he doth say that while the same Roger doth suppose by his writ that this Thomas hath unjustly impeded this Roger so that he could not have the aforesaid fairs etc., yet the same Roger in his counting doth not allege or show any hindrance by which the same Thomas hath hindered him in this matter; and thereof he asketh judgment etc.

A day is given them to hear their judgment here fifteen days from the Day of the Holy Trinity etc. Upon which day the aforesaid parties do come by their aforesaid attorneys. And a day is given them to hear their judgment here on the Morrow of St. Martin in the same state in which now etc.

20. MASON *v.* KING.

I.

Writ of entry on disseisin brought against a woman that was tenant in dower. She made default and the heir intervened and prayed to be received to defend his right. It was objected that his father was outside the degrees, etc., and that the alleged entry was badly laid, as it alleged that the woman had entry through the heir of her husband, whereas she had entry through her husband on the assignment of the heir. The circumstances are set out at the end of the report.

One Robert brought his writ of entry founded upon novel disseisin against Margery, and said 'in the which she hath no entry save by Ralph of E. who wrongfully and in default of judgment disseised his father thereof subsequently to the passage etc.' Margery made default etc., wherefore Robert claimed seisin of the land. One Geoffrey came and said that Margery holdeth of his heritage in name of dower, and he prayed to be received.

Claver. You ought not to be received, for your father is not in the degrees, and so, if you were received, our writ would be abated; wherefore etc.

Ingham. One John, our father, was seised etc. After his death

¹ Money paid in fairs to the lord of the soil for breaking of the ground to set up booths or stalls.

² Money paid for the right of erecting stalls in a fair or market.

Rauf com fiz et heir et assigna dowere a Margerie sa marastre vers qi le bref est ore porte le quel Rauf morust saunz heir de sey par qi le dreit del reuersioun est ore descendi a nous com a frere et heir issint tient ele en noun de dowere et la reuersioun a nous et prioms etc.

Clau. Nostre bref est deinz degrez et vous estes plus auant dun degre et per consequens hors de degrez par qi si vous feussez resceu ¹nostre bref se abatereit iugement.²

Ing. Vollez vous pur vostre malueis bref qest malement conceu qe nous ne deuoms estre resceu a defendre³ nostre dreit ou assignement de dowere ne fet par degre par qi nous sumes deinz degrez et sumes venu deuant iugement en cas de statut etc. et prioms etc.

Berr. Il volt auerer la disseisine faite par R. et son bref deinz degrez etc. comment serrez vous qe estes hors etc. resceu.

Toud. Si Margerie feut mort et⁴ vn estrange sabatist⁵ apres sa mort nauereit pas Geffrei bon bref de Intrusioun a dire in quas non habet ingressum si non per intrusionem quam in illas fecit post mortem Margerie que illas tenuit in dote de dono I. quondam viri sui et ex assignacione Radulphi fratris predicti G. cuius heres ipse est quod diceret sic et il est venu deuant iugement ergo per statutum etc.

Berr. Nous fesoms protestacioun qe si vous seiez resceu vous ne pledrez pas au bref ne vouchetz point.

Toud. Il ne vouche mye pur les degrez.

Berr. Seit il resceu.

Et fuit admissus et dit qe Rauf ne disseisi point Robert son pere etc. prest etc.

Et alii e contra.

Et est casus talis vt videtur qe Ion et Rauf fesoient la disseisine en commune qe Ion tient tote sa vie apres qi mort Rauf entra com fiz et heir et assigna dowere a Margerie vers qi Robert porta son bref de la disseisine fait a son pere etc. set queratur de breui vt quidam dicunt quod femme tenant en dowere entra par le Baroun de qi dowement ele tient et ne mye par le heir de qi assignement ele est dowe etc.

^{1,2} From *T*; etc., *M*. ³ *T* adds ne sauer. ⁴ Supplied from *B*, *C*, *P*, *T*.
⁵ From *B*, *C*, *P*, *T*; abate et, *M*.

etc., one Ralph entered as son and heir, and he assigned dower to Margery, his stepmother, against whom our writ is now brought. The said Ralph died without heir of his body, and the right in the reversion consequently descended to us, as his brother and heir. And so Margery holdeth in the name of dower, and the reversion is to us, and we pray etc.

Claver. Our writ is in the degrees, and you are a degree more remote, and consequently outside the degrees. Therefore if you were received our writ would abate. Judgment.

Ingham. Just because your writ is bad and badly drafted, do you want to keep us from being received to defend our right? Assignment of dower¹ doth not make a degree; therefore we are within the degrees, and we are come before judgment, in the circumstances contemplated by the statute² etc., and we pray etc.

BEREFORD C.J. The complainant desireth to aver disseisin by R., and his writ is in the degrees. How are you, that are outside etc., to be received?

Toudeby. If Margery should die and a stranger should abate himself after her death, would not Geoffrey have a good writ of Intrusion, running 'into the which he had not entry save by the intrusion he made therein after the death of Margery who held those tenements in dower of the gift of J. that was aforetime her husband and of the assignment of Ralph the brother of the aforesaid Geoffrey, whose heir Geoffrey is' ?—*inferring that he would*—and he hath come before judgment. Consequently by the statute etc.

BEREFORD C.J. We warn you that if you be received you will not be allowed to plead to the writ nor to vouch.

Toudeby. There is no voucher for degrees.

BEREFORD C.J. Let him be received.

And he was received and said that Ralph did not disseise Robert his father, ready etc.

And the other side joined issue.

The facts of the case seem to be these. John and Ralph committed the disseisin jointly. John held for the whole of his life, and upon his death Ralph entered as son and heir, and assigned dower to Margery, against whom Robert brought his writ, basing it on the disseisin done to his father etc. But *quere* as to the wording of the writ, as some say that it alleged that the wife, tenant in dower, entered by her husband, by whose endowment she holdeth, and not by the heir, by whose assignment she is endowed etc.

¹ The words 'by a disseisor' have probably dropped out here. See 1 Coke's *Inst.* 386. ² Statute of Westminster II. cap. iii.

II.¹

Prier estre resceu.

Vn Robert porta bref dentre vers vne Margerie supposant son entre par Rauf qi disseisa A. pere etc. Margerie fist defaute apres defaute suruint Hige Geffrei et dist qe Margerie tient en dower de son heritage du dowment Ion son pere et del assignement Rauf son frere et pria estre resceu.

Clauer. Vostre prier est contraire a nostre bref en lentre par qi etc.

Ing. Vostre bref suppose lentre par celi qi assigna et nentendoms pas qe vostre mauuais bref nous ostra.

Berr. Si vous seez resceu vous ne abaterez pas le bref ne ne voucherez.

Et en cel maner fu resceu et trauersa la disseisine.

III.²

Nota qe vn Iohan porta sun bref dentre vers Hughe Bossard et Cecile sa femme qe firent defaute apres defaute et le grant Cape retourne lattorne Iohan se fist essoigner.

Pass. sur le rendre dit sire la vn Iohan porte etc. vers Hughe et Cecile sa femme qe font defaute etc. vous auez icy W. le fiz Iohan le clerk qe vous dist qil tenent ceux tenementz de lui en dowere com del dowere .C. et prie qe lour defaute a lui ne soit preiudiciel. Et prie estre receu a defendre sun dreit.

Ber. Coment sun dreit.

Pass. C. si tient ceux tenementz del dowement le dit Iohan le clerk iadis sun Baroun del assignement cestui W.

Beref. a Rideual. Rendez cele essoigne et entrez sur lassone coment W. est venu a defendre etc. et donez a W. mesme le Iour.

Ber. Celui qe se fist essoigner il quida auer greindre auantage par lassone qe en propre persun. Mes a sun departir il auera meindre.

Herle. Ceo fut vn treget purueu et de loinz.

Ber. A rien ne lui vaudra.

¹ Text of (II) from X.

² Text of (III) from Y.

II.

Prayer to be received.

One Robert brought a writ of entry against one Margery, alleging that she entered by Ralph that disseised A. father etc. Margery made default after default. Hugh Geoffrey intervened and said that Margery held in dower of his heritage by the endowment of John his father and the assignment of Ralph his brother ; and he prayed to be received.

Claver. Your prayer is opposed to the entry we lay in our writ. Wherefore etc.

Ingham. Your writ supposeth the entry to be through the assignor, and we submit that the badness of your writ is no reason why we should be ejected.

BEREFORD C.J. If you be received you will not be allowed to abate the writ nor to vouch.

And on these conditions he was received and traversed the disseisin.

III.

Note that one John brought his writ of entry against Hugh Bossard and Cecily his wife, who made default after default, and on the return of the grand *cape* John's attorney had himself essoined.

Passeley, on the casting of the essoin, said : Sir, there is one John who bringeth etc. against Hugh and Cecily his wife who make default etc., and here you have W. the son of John the clerk, who telleth you that they hold these tenements of him in dower, as being the dower of Cecily, and he prayeth that their default may not be to his prejudice. And he prayeth to be received to defend his right.

BEREFORD C.J. How is his right affected ?

Passeley. Cecily holdeth these tenements by the endowment of the said John the clerk, that was aforetime her husband, of the assignment of this W.

BEREFORD C.J. to *Ridevale*.¹ Give this essoin and enter upon the essoin roll, that W. hath come to defend etc., and give W. the same day.

BEREFORD C.J. He that procured that an essoin should be cast for him thought to have more advantage by the essoin than by coming in person ; but when he goeth away he will have less.

Herle. He had gone away on a previously arranged journey, and the distance was great.

BEREFORD C.J. It will avail him naught.

¹ *Ridevale* was one of the clerks of the Court. See p. 45 above.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 147, Norfolk.

Thomas filius Iohannis le Mazoun Walterus Iohannes et Willelmus fratres eiusdem Thome Agnes filia Iohannis le Mazoun et Matilda filia Iohannis le Mazoun per Hugonem de Helghetone custodem suum optulerunt se .iiij. die versus Margaretam filiam Ele kyng de placito sex parcium duarum acrarum terre et dimidii et medietatis vnus mesuagi cum pertinenciis in magna Massingham quas clamant vt Ius suum et cuiusdam Margarete que fuit vxor Iohannis le Mazoun etc. Et ipsa Margareta filia Ele non venit. Et alias scilicet a die sancti Michaelis in .xv. dies proximo preteritos fecit defaltam Ita quod tunc preceptum fuit vicecomiti quod caperet predicta tenementa in manum domini Regis. Et diem etc. Et quod summoneret eam quod esset hic ad hunc diem etc. et similiter quod summoneret predictam Margaretam que fuit vxor Iohannis quod esset hic etc. ad sequendum simul etc. Et vicecomes modo testatur diem capcionis etc. et quod summonuerat predictam Margaretam filiam Ele etc. Et quo ad predictam Margaretam que fuit vxor Iohannis vicecomes nichil inde fecit etc. Et super hoc venit quidam Galfridus filius Iohannis le Mazoun et dicit quod predicta tenementa sunt Ius suum et quod predicta Margareta filia Ele nichil habet in eisdem nisi dotem etc. tantum de hereditate ipsius Galfridi Dicit reuera quod predicta tenementa fuerunt cuiusdam Iohannis le Mazoun quondam viri predictae Margarete filie Ele qui quidem Iohannes le Mazoun inde obiit seisis in dominico suo vt de feodo post cuius mortem quidam Ranulphus intrauit in tenementis illis vt filius et heres eiusdem Iohannis et assignauit ipsi Margarete filie Ele tenementa illa tenenda nomine dotis etc. qui quidem Ranulphus postmodo obiit sine herede de se Ita quod Ius reuersionis eorundem tenementorum descendit ipsi Galfrido vt fratri et heredi etc. et hoc paratus est verificare etc. vnde petit quod ipse per defaltam predictae Margarete non amittat Ius suum in hac parte set quod admittatur ad defensionem etc.

Et Thomas et alii dicunt quod predictus Galfridus ad defensionem predictorum tenementorum admitti non debet in forma predicta quia dicunt quod ipsi petunt predicta tenementa versus predictam Margaretam filiam Ele etc. in que eadem Margareta non habet ingressum nisi per Ranulphum filium Iohannis le Mazoun qui inde iniuste etc. disseisiuit ipsos Thomam et alios post primam etc. vnde si predictus Galfridus admitteretur in forma qua pretendit etc. hoc esset ad breue suum cassandum etc. set si idem Galfridus respondere velit ad accionem ipsorum Thome et aliorum in hac parte bene concedunt quod admittatur etc. Ita cum quod securitatem inueniat de exitibus medii temporis si etc. Ideo admittatur etc.

Et idem Galfridus bene defendit quod predictus Ranulphus non disseisiuit predictos Thomam et alios de predictis tenementis sicut iidem

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 147, Norfolk.

Thomas, son of John the Mason, Walter, John and William, brothers of the same Thomas, Agnes, daughter of John the Mason, and Maud, daughter of John the Mason, offered themselves on the fourth day, by Hugh of Helhoughton their guardian, against Margery, daughter of Ellis King, of a plea of six seventh-parts of two acres and a half of land, and of a moiety of a messuage with the appurtenances in Great Massingham, which they claim as their right and that of a certain Margery that was wife of John the Mason etc. And Margery, daughter of Ellis, doth not come. And another time, to wit, in the quindenes of Michaelmas last past, she did make default; so that the Sheriff was then commanded to take the aforesaid tenements into the hand of the lord King, and a day etc., and to summon her to be here on this day etc., and also to summon the aforesaid Margery that was wife of John that she should be here etc. to prosecute together with etc. And the Sheriff doth now bear witness of the day of the taking etc. and that he had summoned the aforesaid Margery, daughter of Ellis etc. But as to the aforesaid Margery that was wife of John, the Sheriff hath done naught etc. And upon this there cometh a certain Geoffrey that is son of John the Mason who saith that the aforesaid tenements are his right, and that the aforesaid Margery, daughter of Ellis, hath naught in the same save dower etc. only out of the heritage of the same Geoffrey. He saith that in sooth the aforesaid tenements were held by a certain John the Mason that was aforetime husband of the aforesaid Margery, daughter of Ellis, which said John the Mason died seised thereof in his own demesne as of fee, and that after his death a certain Ralph entered into those tenements, as son and heir of the same John, and assigned those tenements to the said Margery daughter of Ellis, to be held by her in name of dower etc., which said Ralph did afterwards die without heir of his body, so that the right in the reversion of the same tenements descended to this Geoffrey as brother and heir etc., and this he is ready to aver etc. Wherefore he asketh that in these circumstances he may not lose his right by reason of the default of the aforesaid Margery but may be received to defend etc.

And Thomas and the others do say that the aforesaid Geoffrey ought not to be received to defend his right in the aforesaid tenements in the form aforesaid, for they say that they themselves do claim the aforesaid tenements against the aforesaid Margery, daughter of Ellis etc., and say that she had no entry into them save by Ralph, son of John the Mason, who thereof did unjustly etc. disseise these Thomas and the others after the first etc.; and therefore if the aforesaid Geoffrey should be received in the form which he tendereth etc., this would be in abatement of their writ etc.; but if the same Geoffrey desire to answer the action of the same Thomas and the others in this matter they will readily consent that he be received etc., provided that he find security for the mesne issues etc. So he is to be received etc.

And the same Geoffrey doth deny that the aforesaid Ralph did disseise the aforesaid Thomas and the others of the aforesaid tenements as the same

Note from the Record—*continued.*

Thomas et alii dicunt Et de hoc ponit se super patriam Et Thomas et alii similiter Ideo preceptum est vicecomiti quod venire faciat a die sancte Trinitatis in .xv. dies .xij. etc. per quos etc. Et qui nec etc. ad recognizandum etc. Quia tam etc. Et super hoc Hugo de Depedale Iohannes de Huneworthe Iohannes de Nortone et Rogerus de Brisele manuceperunt pro predicto Galfrido ad respondendum de exitibus medii temporis si etc. Et sciendum quod septima pars predictorum tenementorum excipitur eo quod predicta Margareta que fuit vxor Iohannis particeps ipsorum Thome et aliorum non venit Ideo sicut prius preceptum est vicecomiti quod summoneat eam quod sit hic ad prefatum terminum ad sequendum simul etc. Et predictus Galfridus posuit loco suo Iohannem de Nortone versus Thomam et alios de predicto placito etc. Postea instanter ante recessum predictorum Thome et aliorum petencium etc. et etiam ante recessum attornatus dicti Galfridi quia videtur Curie quod predicta verificacio minus rite et per surrepcionem Curie admissa fuit eo quod predicta Margareta que fuit vxor dicti Iohannis particeps etc. nondum summonita fuit etc. Ideo Dies datus est eis hic de audiendo iudicio suo de predicta defalta versus predictam Margaretam filiam Ele etc. et super admissione predicti Galfridi ad defendendum predicta tenementa etc. ad prefatam quindenam sancte Trinitatis. Et eadem Margareta summoneatur quod sit hic ad prefatum terminum ad sequendum simul etc. in forma predicta Et dictum est attornato predicti Galfridi quod premuniri faciat ipsum Galfridum quod tunc sit hic in propria persona si sibi viderit expedire Et tunc fiet eis in premissis quod de iure etc. Et interim nullum fuerit eis breue ad faciendum venire .xij. etc. Postea ad diem illum venerunt tam predicti Thomas Walterus Iohannes Willelmus et Agnes et Matilda per custodem suum quam predictus Galfridus in propria persona sua Et predicta Margareta que fuit vxor predicti Iohannis summonita ad sequendum simul etc. non venit Ideo predicti Thomas et alii etc. sequuntur sine etc. Et tam ipsi quam predictus Galfridus petunt quod predicta Iurata procedat inde inter eos in forma qua ipsi prius se posuerunt Ideo preceptum est vicecomiti quod venire faciat hic in crastino sancti Martini .xij. etc. Quia tam etc. per manucapcionem predictam Et predictus Galfridus posuit loco suo predictum Iohannem de Nortone vt prius etc.

21. NOTA.¹

Nota eodem termino qe la ou le tenant voucha a garant et le garant fist defaute apres defaute. A queu Iour le tenant qe voucha se fist essoigner de mal de venue le demandant se profrist et demanda iugement de la defaute le garant.

¹ Note from Y.

Note from the Record—*continued*.

Thomas and the others do say. And of this he putteth himself upon the country. And Thomas and the others do the like. Therefore the Sheriff is charged that he make to come here in the quindenes of the Trinity twelve etc. through whom etc. and who neither etc. to make recognition etc. Because both etc. And upon this Hugh of Deepdale, John of Hunworth, John of Norton and Roger of Brisley become security for the aforesaid Geoffrey that he will be answerable for the mesne issues etc. And it must be known that a seventh part of the aforesaid tenements is excepted because that the aforesaid Margery, that was wife of John, a parcener with Thomas and the others, doth not come. So, as before, the Sheriff is commanded to summon her that she be here at the term aforesaid to prosecute together with etc. And the aforesaid Geoffrey did put John of Norton in his place against Thomas and the others of the aforesaid plea etc. Afterwards, immediately before the withdrawal of the aforesaid Thomas and the other claimants etc., and, indeed, before the withdrawal of the attorney of the said Geoffrey, for that it doth seem to the Court that the aforesaid averment was irregularly received and without proper precaution of the Court, because the aforesaid Margery that was wife of the said John, a parcener etc. hath not yet been summoned etc., a day is given to them here to hear their judgment of the aforesaid default against the aforesaid Margery, daughter of Ellis etc. and upon the admission of the aforesaid Geoffrey to defend the aforesaid tenements etc. on the aforesaid quindene of the Holy Trinity. And the same Margery is to be summoned that she be here at the aforesaid term to prosecute together etc. in the aforesaid form. And the attorney of the aforesaid Geoffrey is bidden to warn the said Geoffrey that he be here then in person if he shall think it to be to his advantage. And right shall then be done to them in respect of the premises etc. And in the meantime they are to have no writ for making to come here twelve etc. Afterwards, upon that day, came the aforesaid Thomas, Walter, John, William, and Agnes and Maud, by their guardian, and also the aforesaid Geoffrey in person. And the aforesaid Margery that was wife of the aforesaid John, that was summoned to prosecute together etc. doth not come. So the aforesaid Thomas and the others etc. proceed without etc. And these, as well as the aforesaid Geoffrey, do ask that the aforesaid Jury proceed thereof between them in the form in which they had beforetime put themselves. So the Sheriff is charged that he make to come here on the Morrow of St. Martin twelve etc. because both etc., by the aforesaid manucaption. And the aforesaid Geoffrey did put in his place the aforesaid John of Norton as before etc.

21. NOTE.

Note that in the same term a tenant vouched to warranty, and the warrantor made default after default. On the appointed day the tenant who had vouched had himself essoined *de malo veniendi*. The demandant offered himself and asked judgment of the warrantor's default.

Bereford fist demander le garant.

Et ne vient point lassoigne le tenant pria le rendre del assoigne.

Ber. al essoigne: Beaux amiz vostre mestre si ad vouche a garant Iohan le queu Iohan fet ore defaute apres defaute si agarde la Court qe le demandant rescouere sa seisine vers le tenant et le tenant a la value vers le garant et le garant en la merci.

22. ANON.¹I.²

Entre sur disseisine Et nota si enfant deinz age porte bref dentre etc. de disseisine faite a son pere vers vn estrange qe nest pas disseisour ne son heir le plee delaie a tant qa son age pur ceo qil nest pas en cas de statut.

Vne enfant denz age porta son bref dentre ³super disseisinam pur⁴ disseisine faite a son piere a qi fut dit qil ne dust estre resceu durant son nonage.

*Ing.*⁵ Nostre auncestre porta lassise⁶ et morust en pledant.

Ber. Vers qi porta il lassise.⁷

Herle. A ceo nauoms mester a respoundre depuis qil morust empledant.

Toud. Vous nestes pas en cas de statute⁸ qe bref⁹ ne fut pas porte vers nous ne vers nostre auncestre et ¹⁰si nous voudroms vouchier denz age nous ne purroms.

Et pur ceo qe lassise ne fu porte vers ly ne vers son auncestre sic non in casu statuti quare non fuit disseisitor nec heres eius sed extraneus perquisitor. Et fuit etas concessa.¹¹

II.¹²

Nota qe la ou vn enfant dedeinz eage porta sun bref dentre sur disseisine et qil noust entre si noun par Iohan qe atort et sanz iugement disseisa sun pere.

Touth. Vous estes dedeinz age iugement si vous deuez estre resceu.

Malm. Nostre pere morust enpledant et prioms benefite de statut.

¹ Reported by *D*, *R*, *Y*. ² Text of (I) from *D* collated with *R*. The note in *R* is: Entre vn enfant dedeinz age porta le bref. ³⁻⁴ sur la nouele disseisine en le per de, *R*. ⁵ *Hunt*, *R*. ⁶ la seisine, *R*. ⁷ la seisine, *R*. ⁸ Statute of Westminster I. cap. xlvii. ⁹ la seisine, *R*. ¹⁰⁻¹¹ ensi nestes pas en cas destatut pur quei demandoms iugement, *R*. ¹² Text of (II) from *Y*.

BEREFORD C.J. Call the warrantor.

And he did not come; and the essoiner of the tenant prayed surrender of the essoinee.

BEREFORD C.J. to the essoiners: Fair friends, your master vouched John to warranty, which John hath made default after default. The Court doth give judgment that the demandant do recover his seisin against the tenant, and the tenant do recover to the value against the warrantor, and that the warrantor be in mercy.

22. ANON.

I.

Entry on disseisin. And note that if an infant within age bring a writ of entry etc. through disseisin done to his father, against a stranger, not being the actual disseisor or his heir, the plea will stand over until his full age, for the case doth not come within the circumstances contemplated by the statute.

An infant within age brought his writ of entry on disseisin, for disseisin done to his father. It was said to him that he ought not to be received during his nonage.

Ingham. Our ancestor brought the assize and died while the plea was still pending.

BEREFORD C.J. Against whom did he bring the assize?

Herle. We are not called upon to say that, since he died while the plea was still pending.

Toudeby. You do not come within the provisions of the statute,¹ for the writ was brought neither against us nor our ancestor; and if we wanted to vouch under age we could not.

And because the assize was brought neither against the present tenant nor his ancestor, so the matter doth not come within the circumstances contemplated by the statute, because the tenant is not a disseisor nor his heir, but a strange purchaser. And the objection as to the plaintiff's age was allowed.

II.

Note that an infant within age brought his writ of entry on disseisin, and [said that the tenant] had not entry save by John that wrongfully and without judgment disseised his father.

Toudeby. You are within age. Judgment if you ought to be received.

Malberthorpe. Our father died pleading and we pray the benefit of the Statute.¹

¹ Statute of Westminster, I. cap. xlvii.

Tou. Vous nestes mie en cas del statut qar nous ne sumes celui ne sun heir qe disseisa vostre pere.

Malm. Il semble qe par mesme la resoun deuoms nous estre eide uers vous.

Bere. A la comune lei vous ne deuez estre resceu deuant vostre age moustrez donqe coment lestatut vous eide vers altre qe vers celui ou sun heir qe disseisa vostre pere.

Frisq. Lestatut dit en la fin en qi meines qeles tenementz deuenent apres altri mort.

Et *Bereford* non allocatur.

Set dixit *Rideual* entrez la parole et tendez sun age sil voudra etc.

23. ROYS *v.* THE ABBOT OF ST. BENET OF HOLME.¹

I.²

Ne vexes ou lassone ne tolust mie la suite le seignur vers sun vilein et a ceo nent aresteant ceo qe allegge fut qe bref de trespas fut en Bank le Roy des chartres de villein de fraunchise debruses et ces huches etc.

Iohan de Ros porta sun ne vexes vers labbe de seint Benet de Holmes et dist qe il lui trauailla et lui soeffre estre trauailla et lui demanda etc.

Mugg. defendit etc. et vous dioms qil ne deit estre respoundu qar il est nostre vilein et fumes seisi de lui com de nostre vilein le Iour du bref purchace.

Denom. A ceo ne auendrez mie qar vous vous feistes essoner vers nous as vtanes de seint Michel et par cele essone aiourne a ore et issi nous ad il grante a la comune lei et par autre resoun il ad fet attorne vers nous com vers fraunc homme iugement etc.

Ber. Il vous com vilein ad respoundu com fet ore etc. par quoi dites altre chose.

Denom. Facent lour excepcion plus pleine qar ele nest pas assez pleine etc.

Bereford a *Mugg.* Fetes vostre excepcion plus pleine car il nest pas assez a dire qil est vostre vilein et fut le iour du bref purchace etc. sanz plus dire etc.

¹ Reported by *B, G, L, P, Q, T, X, Y.* Names of the parties from the Record. Text of (I) from *Y.*

Toudeby. You do not come within the statute,¹ for we are not he that disseised your father, nor yet are we his heir.

Malberthorpe. We think that for the reasons we have given we ought to be aided against you.

BEREFORD C.J. By the common law you ought not to be received before your full age. Show us, then, how the statute aids you against one who neither himself disseised your father nor is heir of one who did.

Friskenev. The statute doth say, near the close, 'to whom lands may come after the death of other.'

But BEREFORD C.J. would not accept this; and *Ridevale*² said: Enter the case for hearing, and let the defendant object the plaintiff's infancy, if he wish it.

23. ROYS v. THE ABBOT OF ST. BENET OF HOLME.

I.

Ne vexes, where it was held that essoinment had by the lord did not deprive him of his action against his villein; and this notwithstanding the allegation that a writ of trespass was pending against the lord in the King's Bench for mutilating a charter of enfranchisement from villeinage and for breaking into the complainant's house etc.

John Roys brought his *ne vexes* against the Abbot of St. Benet of Holme and said that he did travail him and did suffer him to be travailed and did claim etc.

Miggeley defended etc. and [said:] We tell you that he ought not to be answered, for he is our villein, and we were seised of him, as of our villein, on the day of the purchase of the writ.

Denham. You cannot maintain that, for you made yourself to be essoined against him in the octaves of St. Michael, and by that essoin the hearing was adjourned till to-day; and so the Abbot hath recognised us by the common law, as he hath also done for another reason, for he hath made an attorney against us as against a free man. Judgment etc.

BEREFORD C.J. He answered you as a villein, as he doth now etc. Wherefore make other reply.

Denham. Let them make their exception more fully, for it is not sufficiently full.

BEREFORD C.J. to *Miggeley*. Make your exception more fully, for it is not enough to say that he is your villein and was your villein on the day of the purchase of the writ etc. without saying further etc.

¹ Statute of Westminster I. cap. xlvii.

² One of the clerks of the Court. See p. 45 above.

Mugg. Nostre vilein et fumes seisi etc. Iour etc. com de fere de lui nostre prouost et fere rechat de sa chare et de sun sank etc.

Bereford. Ore est vostre excepcion pleine etc.

Denum. A ceo ne puet il auenir car vn N. iadis sun predecessor abbe etc. de lassent et de la volente sun couent enfeffa vnfrey Besael cestui Iohan de .xv. acres de terre des queux les .iiij. de terre dount nous pleignoms ore sunt etc. a auer et tenir a lui et a ses heirs de lui et de ces successors et demandoms iugement sil encountre le fet sun predecessor nous com sun vilein puissez challenger et mist a la Court la Chartre sun predecessor qe fust descire.

Mugg. Vostre chartre nest qe vne demie chartre iugement si a tieu chartre [etc.]

Scrope. Autrefois vous meismes meistes debat vers nous en clamant nostre etc. com ore etc. et pur cel debat entrastes nostre meson et debrusastes nos huis et nos serrures et enportastes nos biens et descirastes ceste chartre et nos autres monumenz dount de cel trespas si auoms bref de trespas encountre la pees en Baunk le Roy etc.

Mugg. Vous veez bien coment il respoude a nostre excepcion et en oustant nous de cele excepcion il mettent auant vne demie chartre a qi nule foÿ ne fet a doner et demandoms iugement etc.

Scrope. Com vostre villein nous ne poez clamer qar vostre predecessor enfeffa nostre auncestor etc. a tenir de lui par real seruice etc. iagement etc.

Mugg. Vous ne prouez mie vostre dit car nous pledoms tut a la persone et vous pledez a la tenance et issi ne reuynt etc.

Hle. ad idem. Si vous volez vser lespecialte en barre de nostre excepcion vsez la en forme qar nous pledoms tut a vostre persone.

Denom. Vostre predecessor enfeffa nostre auncestor a tenir fraunchement et si defaute soit en la chartre ceo est par vous et par vostre tort demesne.

Ber. Sil fut atteint de ceo qe vous lui surmettez ceo serroit bone proue a maintenir uostre fraunchise etc.

Scrope. Ley deit estre fauorable a maintenir fraunchise.

Miggeley. Our villein etc. and we were seised etc. on the day etc. so as to make of him our reeve and to have relief of his body and his blood etc.

BEREFORD C.J. Now your exception is full etc.

Denham. He cannot succeed in that, for one N., that was aforetime his predecessor as Abbot etc., did, by the assent and the will of his brotherhood, enfeofff Humphrey that was the great-grandfather of this John of fifteen acres of land, of which the three acres of land in respect of which we now complain are parcel, to have and to hold to him and to his heirs of N. and his successors; and we ask judgment whether you can, against the deed of the Abbot's predecessor, claim us as his villein—and he tendered to the Court the charter of the Abbot's predecessor, part of which was torn away.

Miggeley. Your charter is but half a charter. Judgment whether on such a charter etc.

Scrope. Once before you caused a dispute between us¹ in claiming our etc. as you now etc., and to help you in that action you entered our house and broke open our doors and locks and carried off our goods and tore up this charter and our other muniments; in respect of which trespass against the peace we have now a writ pending in the King's Bench etc.

Miggeley. You see what sort of an answer he giveth to our exception; and to oust us from that exception he showeth you half a charter to which no credence nor weight attacheth, and we ask judgment etc.

Scrope. You cannot claim us as your villein, for your predecessor enfeofffed our ancestor etc. to hold of him by real service etc.; judgment etc.

Miggeley. You are not proving your statement [that you are not our villein], for we are pleading entirely as to your person, while you are pleading as to the tenancy, and that is not to the point.

Herle, ad idem. If you want to use your specialty to bar our exception use it in due form, for we are pleading solely to your person.

Denham. Your predecessor enfeofffed our ancestor to hold freely, and if there be any default in the charter that default cometh of you and your own tort.

BEREFORD C.J. If he were to be convicted of that which you do charge against him, it would go far to uphold your free estate etc.

Scrope. The law ought to look favourably upon an attempt to prove free estate.

¹ See *Year Book Series*, vol. iii. p. 199.

Beref. Le clerk dit Mora trahit periculum et ceo fut dit pur ceo qe primes duist auer termine sun bref de trespas etc. et pus sa excepcion serroit cler etc.

Ber. Dites autre chose.

Scrope. Fraunc homme et de fraunc estat prest del auerer.

Mugg. Lui et ces auncestors villeins labbe et ces predecessors du temps memore ne court prest del auerer.

Et alii e contra.

II.¹

Ne vexes porte par le villein ou il allegga qe soun seignur fut essone deuers luy auaunt aparaunce et issi lauoit il accepte com fraunk et non allocatur quere tamen si p^{ost} aparaunce.

Iohan^{de} Ros porta son ne vexes vers Labbe de Seint Beneit de Holme² qil ly trauaile etc. et ly demande etc.

*Mutt.*³ defend tort et force⁴ etc. et dit qil fut ⁵son vileyn⁶ par qi il ne deuerait estre respoundu.

Denom. Couient⁷ qe vous diez plus sauier qe vous estes seisi etc.

Mutt. Il est nostre vileyn et nous seisi de luy com de nostre vileyn.

Berr. Coment seisi.

Mutt. De lui [et] de ces auncestres com de nos vileyns en fesaunt de luy nostre prouost ⁸et fust nostre prouost⁹ et enpernaunt de luy rechat de la char et de saunk et redempciouns ¹⁰pur filles marier et fiz¹¹ et de ly et de ces auncestres a tailler haut et bas a nostre volunte prest etc.

Denom. A ceo nauendrez mye qe autre foiz en mesme ceo plee vous futes essone de vers nous com de vers fraunk homme ¹²et dautre part vous feistes attorne vers nous com deuers fraunk homme¹³ et en taunt vous nous auez respoundu iugement etc.

Berr. Vous voilez dire qil est enfraunchie par taunt quod diceret non et pur ceo dites outre.

Denom. Vn A. predecessour cesti Abbe enfeffa vn Aldestone¹⁴ tresael cesti Iohan de .xx. acres de terre a tenir ¹⁵a ly et a ces heirs¹⁶ franchise et quitement par vne Chartre par assent et la volunte le Couent de¹⁷ .iiij. acres de les queux Labbe demande ore autre seruice etc. sunt parcele et issint ad il et touz ces auncestres tenuz cele terre pur¹⁸ ceo

¹ Text of (II) from *P* collated with *B*, *L*, *Q*, and *T*. Headnote from *Q*. The headnote in *B* is: Ne vexes ou excepcioun de villenage fust allegge ou la partie trauersa et dit fraunk etc. et le defendant se fist essone et non obstante par tant ne fust il pas fraunk etc. vt patet post par vn nota. ² Holond, *T*. ³ *T* has *Mig* throughout. ⁴ *B* adds ou et qant il deuera; *T* adds ou et qant il deuera saunz plus. ^{5,6} le vilein Labbe, *B*. ⁷ *T* has y couient. ⁸⁻⁹ added from *L*, *Q*, and *T*. ¹⁰⁻¹¹ de fitz et filles marier, *T*; *L* omits et fiz. ¹²⁻¹³ *T* omits.

¹⁴ Ostone, *B*. ¹⁵⁻¹⁶ de luy et de sez successors. ¹⁷ *T* has dount le *for* de. ¹⁸ puy, *B*.

BEREFORD C.J. The clerk saith that delay involveth danger—and this was said because the complainant ought first to have prosecuted his writ of trespass etc. to an issue, and then [the validity or invalidity of] his exception would be clear.

BEREFORD C.J. Say something else.

Scrope. Free man and of free estate. Ready to aver it.

Miggeley. Ready to aver that he and his ancestors are and were villeins of the Abbot and his predecessors from a time higher than memory.

And the other side joined issue.

II.

Ne vexes brought by a villein, where the villein claimed that his lord had recognised him as a free man by essoining himself against him before appearance. But this was not allowed. *Quere*, however, if the essoinment had been after appearance.

John Roys brought his *ne vexes* against the Abbot of St. Benet of Holme for that he doth travail him etc. and doth demand of him etc.

Mutford denieth wrong and force etc. and saith that John is the Abbot's villein, and therefore ought not to be answered.

Denham. You must say more than that, to wit, that you are seised etc.

Mutford. He is our villein, and we are seised of him as of our villein.

BEREFORD C.J. Show how you are seised.

Mutford. [Seised] of him and of his ancestors as of our villeins, in making of him our reeve, and our reeve he was; in taking from him relief of flesh and blood and ransoms for marrying his daughters and his sons, and in tallaging him and his ancestors high and low at our will. Ready etc.

Denham. You will not get to that, for at other time, during this same plea, you were essoined against us as against a free man; and, moreover, you made an attorney against us as against a free man; and by so doing you have received us. Judgment etc.

BEREFORD C.J. You want us to infer that he is enfranchised in consequence of all that. I do not agree, and so say more.

Denham. One A., a predecessor of this Abbot, enfeoffed by charter one Aldeston, great-great-grandfather of this John, of twenty acres of land, to hold to him and to his heirs freely and quietly, with the assent and by the will of the Convent, and of these [thirty acres] the four acres from which the Abbot is now claiming other services are parcel; and John and all his ancestors have held that land as freehold in virtue of

feffement fraunchement¹ etc. et mesme cesti Abbe qe ore est et autrez vindrent a force et as armes a la mesoun mesme cesti Iohan et ces hus² debruserunt et entrerunt encontre la pees et les chartres et autrez munimentz debruserunt et veez ci munimentz oue la commune seal de la meson pendaunt et mist auaunt .ij. faites qe furunt debruses mes les seals penderunt et demandoms iugement.

Mug. Vous auez mis auaunt Chartres³ pur vous enfraunchir donqe si vous voilez vers les pur respouns⁴ dites ceo et nous vous respoundroms assetz.

Denom. Nous voloms auerer⁵ qe le fet seit tel etc.

Mug. Fetes vous respounable qe nous dioms qe vous estes nostre vileyn par qi vous ne deuez estre respoundu et pur ceo qe la Chartre depesse.

Denom. ne osa ⁶mye vser la chartre⁷ respoudre mes il dit qil fut fraunk homme et de fraunk estat et touz ces auncestres prest etc.

Et alii e contra.

Et fut entre en Roule le noun son besael et ael etc.

III.⁸

Ne vexes porte vers le seignour par son vileyn.

Vn Ion de Ros porta bref ne vexes vers labbe de seynt benet etc. et dit qe atort ly trauille etc.

Migg. defend tort etc. et dit qil ne deit estre respoundu Car il est nostre vyleyn.

Scrop. A ceo ne deuert estre ressu saunt ceo qe vous ne diet qe vous futes seisi de ly com de vostre vilein.

Migg. Il est nostre vileyn et nous seisi de ly com de nostre vyleyn.

Scrop. A cel respouns ne deuert estre ressu par la resoun qe vous mesmes futes essone vers nous com ver [fraunk] homme ala commune ley et auoms ior par continuaunce dek a ore pur cel essone iugement.

Migg. Par cel essone ne nous put il barrer Car cel essoigne poit auer este iette par vous ou par autre par collusion de nous reboter de nostre excepcion par qi etc.

Berr. Dites outre car par tant ne les put oster de lor excepcion barrer.

Scrop. Vncore ne serra il ressu de allegger vylenage en nostre

¹ *T* omits.

² husez, *T*.

³⁻⁴ dount si vous lez voilliez vser pur respouns pur vous enfraunchir, *B*, *T*.

⁵ Added from *B*, *T*.

⁶⁻⁷ pas vser ceo

pur, *T* ; *B* has the same, with la chartre for ceo.

⁸ Text of (III) from *G*.

that enfeoffment etc. And this same Abbot that now is and others did come with force and arms to the house of this same John and did break his doors and did enter, against the peace, and did mutilate the charters and other muniments ; and see here charters with the common seal of the House attached to them—and he tendered two deeds that were mutilated, but the seals were attached to them—and we ask judgment.

Mutford. You have tendered charters to prove your enfranchisement. If you want to use them as an answer, say so, and we will reply to you sufficiently.

Denham. We will aver that the deed is such etc.

Mutford. Show us that you are answerable, for we tell you that you are our villein ; wherefore, and because the charter is mutilated, you ought not to be answered.

Denham did not venture to use the charter in answer, but said that John was a free man and of free estate, and so were all his ancestors. Ready etc.

And the other side joined issue.

And the names of his great-grandfather and grandfather etc. were entered in the Roll.

III.

Ne vexes brought against the lord by his villein.

One John Roys brought a writ of *ne vexes* against the Abbot of St. Benet etc. and said that he did wrongfully travail him etc.

Miggeley defendeth tort etc., and saith that John ought not to be answered, for he is our villein.

Scrope. You ought not to be received to that, unless you say that you were seised of him as of your villein.

Miggeley. He is our villein, and we are seised of him as of our villein.

Scrope. You ought not, by the common law, to be received to that answer, because you yourself were essoined against us as against a free man ; and we had a day by continuance until to-day by that essoin. Judgment.

Miggeley. He cannot bar us by that essoin, for that essoin may have been cast by you or by another collusively, with a view to rebutting us from our exception. Wherefore etc.

BEREFORD C.J. Say over, for you cannot oust them from their exception by all this.

Scrope. For yet another reason he will not be received to allege

persone qar vn Thomas son predecessor enfeffa nostre Ael de certeinz tenemenz a tenir de ly et ces successors par les servicez de .v.s. pur touz seruicez et par cesti chartre qe ici est iugement si en countre ceo pusse dire qe nous sumes son vyleyn.

Migg. Ceste Chartre est nule qele nest qe demy fet.

Scrop. Nous vous dioms qe vn Robert predecessor mesme cesti abbe vynt aforce a nostre mesoun et debrusa nostre mesoun et ceste chartre decira et sil le voet dedire nous le voloms auerer.

Migg. De pleder a cel auerement ceo serroit inptenent a ceo play par qi etc.

IV.¹

Ne vexes.

Ion Roys porta la ne vexes vers labbe de seint Benet de Holme.

Mutf. Il ne deit estre respoundu qar il est nostre vilein et nosa demorer et dist seisi de li com de son vilein. et fu chace a dire coment seisi et dixit.

Den. A ceo ne deuez auenir qar en ceo bref auez este essone et fetes atorne vers nous com vers fraunk.

Non allocatur.

Den. Vn T. vostre predecessor par assent du Couent de ces tene-mentz dunt etc. enfeffa A. nostre tresael a tenir fraunchement ali et ses heys par certain fet qel fet vous et altres od vous a force et armes debrusastes en nostre mesoun prest etc.

Et mist auant vn fet depesse et nosa demorer et dist fraunk et de fraunk estat prest etc.

Alii e contra et mostra ceo en euidence.

Quere si seisi de vilein pus le bref etc. li put reboter.

V.

NOTA.²

Si vn homme porte bref vers vn autre et le defendant dit qil ne deut estre respoundu qar il est soun vileyn et il est seisi de ly com de soun vileyn etc. ceo ne deit auer relacion taunsoulement au iour du bref purchace mes au temps auant ou apres.

¹ Text of (IV) from X. which the others closely resemble.

² Reported by M, P, T. Text from M,

villeinage in our person, for one Thomas, his predecessor, enfeoffed our grandfather of certain tenements to hold to him and his successors by the services of five shillings for all services, and by this charter, which I show you. Judgment whether against that you can say that we are his villein.

Miggeley. This charter is naught, for it is but half a charter.

Scrope. We tell you that one Robert, predecessor of this same Abbot, came with force to our house and broke into our house and tore this charter ; and if he want to deny it we are ready to aver it.

Miggeley. To plead to such an averment would be to go outside this plea. Wherefore etc.

IV.

Ne vexes.

John Roys brought the *ne vexes* against the Abbot of St. Benet of Holme.

Mutford. He ought not to be answered, for he is our villein—but he did not dare to abide by that but said [further] that the Abbot was seised of him as of his villein ; —and he was forced to say how seised, and he said how.

Denham. You will not succeed in that, for in this plea you have been essoined, and you did make an attorney against us as against a free man.

The exception is not allowed.

Denham. One T., your predecessor, did by assent of the Convent enfeoff A. our great-great-grandfather of these tenements, of which etc., to hold freely to him and his heirs, by a certain deed, which deed you and others together with you did with force and arms mutilate in our house. Ready etc.

And he put forward a mutilated deed, but he did not dare to rely on it, but said that John was free and of free estate. Ready etc.

And the other side joined issue, and tendered evidence.

Quere whether the Abbot could have rebutted John if he had said that he was seised of him as of his villein subsequently to the purchase of the writ.

V.

NOTE.

If a man bring a writ against another, and the defendant say that the plaintiff ought not to be answered, because he is his villein and that he himself is seised of him as of his villein etc., such allegations must refer not only to the day when the writ was purchased, but to the time previous and subsequent thereto.

VI.

NOTA.¹

Nota quod in isto placito non debet inquirere si fuit seisisus die impetracionis breuis sicut in placito liberi tenementi set si fuit seisisus vel non etc.

VII.

NOTA.²

Nota tot soit le seignour essone vers son vileyn auaunt apparaunce pur taunt nest pas le vileyn enfraunchie set si post apparaunce queratur.

VIII.

NOTA.³

Si vn homme porte son bref de trespas deuers vn autre et celui deuers qi le bref est porte lui voille reboter par excepcion de villenage il couent lier la seisine de rechat de char et de saunk de fille marier et de lui tailler haut et bas a sa volonte etc. Et nota qe tot soit le seignur essone vers son vyleyn auant apparaunce par taunt nest pas le vyleyn enfraunchi secus est post apparentiam. Et nota qe si homme purra prouer son tresael fraunc tot eit son Ael et son pierre et lui demoretz et este attrez en villanage pur taunt nest il pas villey. Item si le seignur soit noun suwy en bref de Neyfte apres apparaunce etc. il est forclos pur sa vie quere si son heir auera tiel bref apres sa mort etc. Et nota qe excepcion de villenage nauera mye relacion a iour du bref purchace mes a chescun temps deuant et apres etc.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 35, Norfolk.

Abbas sancti Benedicti de Hulmo summonitus fuit ad respondendum Iohanni Roys de North Walsham de placito quare exigit ab eo alias consuetudines et alia seruicia quam facere debet de libero tenemento suo quod de prefato Abbate tenet in North Walsham etc. Et vnde idem Iohannes queritur quod cum ipse teneat et tenere debeat de predicto abbate tres acras terre cum pertinenciis in predicta villa per fidelitatem et seruicium trium denariorum per annum pro omni seruicio predictus Abbas iniuste exigit ab eo homagium et scutagium et sectam faciendam ad curiam ipsius Abbatis

¹ Note from *B*, *L*, *P*, *Q*, and *T*. Text from *P*. ² Note from *B*, *L*, *P*, and *T*. Text from *T*. The various manuscripts are almost identical. ³ Note from *Z*.

VI.

NOTE.

Note that it appeareth from this same plea that [the lord] ought not to be asked if he were seised on the day of the purchase of the writ, as in a plea of freehold, but whether he was seised or not etc.

VII.

NOTE.

Note that though the lord be essoined against his villein before appearance yet the villein is not thereby enfranchised ; but *Quere* if the essoin were cast after appearance.

VIII.

NOTE.

If a man bring his writ of trespass against another, and this latter against whom the writ is brought desire to rebut him by an exception of villeinage he must say that he is seised of him in taking relief of his flesh and blood for marrying his daughter and in tallaging him high and low at his will. And note that though the lord essoin himself against his villein before appearance the villein is not thereby enfranchised. But it is otherwise if after appearance. And note that if a man can prove that his great-great-grandfather was a free man, then he himself is no villein because his grandfather and his father and himself may have fallen into and continued in a state of villeinage. Note further that if a lord be nonsuited in a writ of Naifty after appearance he is barred for the rest of his life ; but *quere* whether, after his death, his heir may not have a like writ. And note further that an exception of villeinage must not have reference only to the day of the purchase of the writ, but to the time before and after the purchase.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 35, Norfolk.

The abbot of St. Benet of Holme was summoned to answer John Roys of North Walsham of a plea why he doth exact of him other customs and other services from his freehold which he doth hold of the aforesaid Abbot in North Walsham than he ought to render etc. And in respect of this the same John doth complain that whereas he doth hold and ought to hold of the aforesaid Abbot three acres of land with the appurtenances in the aforesaid vill by fealty and the service of three pence a year for all services, the aforesaid Abbot doth unjustly exact from him homage and scutage and suit

Note from the Record—*continued.*

de North Walsham de tribus septimanis in tres septimanas pro predictis tenementis et ipsum Iohannem vexat et graviter distringit pro predictis serviciis que facere non debet nec solet contra prohibitionem domini Regis unde dicit quod deterioratus est et dampnum habet ad valenciam decem librarum Et inde producit sectam etc.

Et Abbas per attornatum suum venit Et dicit quod non debet predicto Iohanni respondere etc. Dicit enim quod idem Iohannes est villanus suus et de ipso fuit seisisus vt de villano suo faciendo ipsum propositum et talliando ipsum alto et basso et capiando merchetum etc. quousque idem Iohannes se elongavit etc. et brevia impetrauit super ipsum Abbatem dominum suum etc. Et hoc paratus est verificare etc.

Et Iohannes dicit quod ipse est liber homo et libere condicionis et similiter Nicholaus pater suus et eciam Simon auus suus et alii sui antecessores fuerunt liberi etc. unde dicit quod predictus Abbas nunquam fuit seisisus de ipso Iohanne vt de villano suo sicut idem Abbas dicit. Et hoc petit quod inquiratur per patriam Et Abbas similiter etc. Ideo preceptum est vicecomiti quod venire faciat hic in octabis sancte Trinitatis .xij. etc. per quos etc. Et qui nec etc. Quia tam etc.¹

24. GOSCELYN *v.* KEMPE AND OTHERS.²I.³

Conspiracie porte deuers les enditors et altres quel bref fut chalenge pur ceo qe les vns furent enditors hoc non obstante les autres responderunt.

Iohan champion porta soun bref de conspiracie vers x. hommes qe vindrent en Court etc. vers quels le dit Iohan counta qe atort et par lour fausse aliaunce et conspiracie entre euz fait fausement et malicieusement procurerent mesmes cesty Iohan estre endite de diuerses larcines et felonies par quel enditement il feut ⁴pris et ⁵enprisonne taunqe etc.

Hengh. Qant a .iiij. scilicet A. B. C. D. il vous dient qe ils⁶ furent del enqueste par la quele il suppose en countant estre endite iugement si deuers euz qe sount enditours ceste bref gyse Et si le velt dedire prest etc.

Migg. Qi respouent les autres.

Ingg. Nous dyoms qe cest bref ne gist mye vers les enditors par qi si le bref abate deuers eus nous entendoms qe deuers tous sabatera issi qe le respouns ⁷des autres⁸ ne seruereit ⁹pur rien.¹⁰

Migg. Nous auoms en countant attache ceste conspiracioun et

¹ Nothing further has been enrolled.

Names of the parties from the Record.

P, *T*. Headnote from *P*.

I follow *P* and *T* in omitting it.

² Reported by *G*, *M*, *P*, *T*, *Y*.

³ Text of (I) from *M*, collated with

⁴⁻⁵ Added from *T*.

⁶ *M* adds ne here.

⁷⁻⁸ Added from *T*.

⁹⁻¹⁰ de nent, *T*.

Note from the Record—continued.

at the court of North Walsham, being the court of the same Abbot, every three weeks for the aforesaid tenements, and doth travail and grievously distrain the said John for the aforesaid services, which he ought not nor hath used to render, against the prohibition of the lord king. In respect of which he doth say that he hath suffered loss and hath damage to the amount of ten pounds. And thereof he doth produce suit etc.

And the Abbot doth come by his attorney and saith that he ought not to answer the aforesaid John etc. For he saith that the same John is his villein and that he was seised of him as of his villein, making his reeve of him and tallaging him high and low and taking merchet of him etc. until the same John absconded etc. and purchased writs against the same Abbot that was his lord etc. And this he is ready to aver etc.

And John doth say that he is a free man and of free estate, as was Nicholas his father, and eke Simon his grandfather, and his other ancestors were freemen etc.; and so he doth say that the aforesaid Abbot was never seised of him as of his villein, as the same Abbot doth say. And he asketh that this be inquired of by the country. And the Abbot doth the like. So the Sheriff is charged that he make come here on the octaves of the Holy Trinity twelve etc. through whom etc., and who are neither, because both etc.

24. GOSCELYN *v.* KEMPE AND OTHERS.

I.

Writ of conspiracy brought against indictors and others. The writ was challenged on the ground that some of the defendants were indictors. The others, however, must answer, this notwithstanding.

John Champion brought his writ of conspiracy against ten men who came into court etc., and the said John counted against them that wrongfully and by their false allegations and by a conspiracy had amongst them they had falsely and maliciously procured this same John to be indicted of divers larcenies and felonies, by reason of which indictment he was taken and kept in prison until etc.

Ingham. As to four, to wit, A., B., C., and D., these tell you that they were of the inquest by which John doth suppose in his counting that he was indicted. Judgment whether against them that be indictors this writ doth lie. And if he would deny [what we say], ready etc.

Miggeley. What answer do the others make?

Ingham. We tell you that this writ doth not lie against the indictors. Consequently, if against them the writ abate, we do suppose that it will abate against all, so that it would profit naught if the others were to answer.

Miggeley. In our counting we did assign this conspiracy and this

ceo tort en euz touz par qi il couient qe euz touz se escusent de ceo trespas personel et si ceo faire ne vollent iugement de euz com noun defendu.

Scroup. ¹*ad idem.*² Tot eiez vous dit qe les .iiij. furent enditours de ceo ne suvit il mye qe le bref ³meyntenant abatera⁴ car le pleintif sil velt porra iondre enqueste qe il ne furent pas enditours et si ceo la feut troue le plee et le proces deuers les autres sil voussent respoudre serroit discontinue par qi etc.

Berr. Dites outre.

Ing. Qant a les autre⁵ .iiij. etc. il vous dient qil ne procurerent pas etc. prest etc. Et qant etc. a .ij. il vous dyent qil presenterent com pruror de la ville de C. a la lete de N. qe Iohan champioun auoit fet ceste felonie pur ceo qe ceo feut commune fame et notorie par le pays et issint nient par conspiracioun ne malicieusement prest etc. Et A. B. C. et D. vous dient vt supra.

Migg. Tot seient il enditours qe nous grauntoms mye vnqore le poient il enditer par conspiracie.

Toud. Vous dites talent car ceo est impossible qe homme puisse procurer ly meme enditer vn homme et vostre bref volt false vel⁶ maliciose ipsum Iohannem indictari procurauerunt etc. par qi etc.

Berr. Feurent il en lenqueste ou noun.

Migg. ⁷Nanil prest etc.⁸

Et alii contra.

II.⁹

Conspiracie porte vers les enditors sor qi il pristrent trauers.

Vn Ion Sampson¹⁰ porta son bref de Conspiracie deuers .x. hommes. Et dit qe eus conspirerent et fausement procurerent de ly enditer de diuers fausunes larcinez et felonies pur les quez il fut enprisone.

Heng. defend etc. et responde pur les .ij. de .x. qe de ren coupable. Et pur les autres nous dioms qe si les enditours fussent de ceo enquerele il porrout auer de ceo lur respounse ergo les procurers ne deyuent estre enquerele tank etc. et demandoms iugement.

Berr. Dites autre chose.

Heng. Qant a A. B. etc. nous vous dioms qil sunt de la vile de C. et eus ensemblement oue lor prouost presenterent a la dyseme qil firent cele felonie car ceo fut commune fame par tot le pays et il ne fynt

¹⁻² From *P*, *T*.
scilicet, *P*, *T*.

³⁻⁴ est meyntenant abatu, *P*, *T*.
⁶ et, *P*.

⁵ autres
⁷⁻⁸ sire il ne furent del enqueste, *T*.

⁹ Text of (II) from *G* collated with *Y*.

¹⁰ Champion, *Y*.

wrongdoing in them all ; wherefore they must all excuse themselves of this personal trespass, and, if they will not do that, we ask judgment of them as making no defence.

Serpe, ad idem. Though you have said that four of them were indictors, it followeth not therefrom that the writ will suddenly abate, for the plaintiff can, if he wish it, go to the inquest on the plea that they were not indictors, and if it should be so found, the plea and the process against the others would be discontinued, even if they had answered. Wherefore etc.

BEREFORD C.J. Say over.

Ingham. As to the other four etc., they tell you that they did not procure etc. Ready etc. And as to the [remaining] two, they tell you that as reeves of the vill of C. they did present at the leet of N. that John Champion had committed this felony, because it was common fame and notorious throughout the countryside, and so they did it not by conspiracy, neither of malice. Ready etc. And A., B., C., and D. tell you as above.

Miggeley. Even though they be indictors, which we do not admit, yet he can indict them for conspiracy.

Toudeby. You are talking at random, for it cannot be that a man should procure himself to indict a man ; and your writ runneth ' falsely and of malice did procure the said John to be indicted etc.' Wherefore etc.

BEREFORD C.J. Were they on the inquest or were they not ?

Miggeley. They were not. Ready etc.

And the other side joined issue.

II.

Writ of conspiracy brought against indictors who took exception to it.

One John Sampson brought his writ of conspiracy against ten men. And he saith that they did conspire and did falsely procure him to be indicted of divers deceits, larcenies and felonies, for the which he was imprisoned.

Ingham defendeth etc. and maketh answer for two of the ten that they are not guilty. And for the others we tell you that if the indictors were sued for this they would have a [good] answer. Therefore, the procurers ought not to be sued before that etc., and we ask judgment.

BEREFORD C.J. Say something else.

Ingham. In respect of A., B. etc. we tell you that they are of the vill of C., and that they, together with their reeve, did present to the dozen that the plaintiff had committed this felony, for it was common

nent malicousement prest ¹del auerer² Et qant a les autre .iiij. nous vous dioms qe eus furent les enditors iugement.

Migg. Nous fumes enprisone par lor faus³ procurement.

Toud. Nous vous dioms qe eus ly enditerent et nul homme ne put procurer ly⁴ mesmes.

Berr a Migg. Furent il delenqueste ou noun.

Migg. Nent dil enqueste prest.

Et alii e contra.

Notes from the Record.

I.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 95d., Suffolk.

Iohannes Kempe Hugo de Brok Ricardus Sampson Willelmus de Wurcestede de Becles Radulphus de Apeltone Iohannes le Webbestere Willelmus de la Grene et Iohannes de Estrild de Becles in misericordia pro pluribus defaultis etc.

Iidem Iohannes et alii attachiati fuerunt ad respondendum Waltero Goscelyn de Kirkeby de placito quare conspiracione inter eos apud Blithford prehabitam prefatum Walterum de Burgaria domus Andree le Glouere apud Becles et bonis et catallis suis ad valenciam quinque solidorum et sex denariorum per ipsum Walterum furtiue asportatis indictari et ipsum ea occasione apud Lodne capi et vsque ad gaolam Regis de Gippewyco duci et ibidem imprisonari et in priona illa detineri quousque in Curia Regis coram dilectis et fidelibus Regis [*sic*] Willelmo de Ormesby et Rogero de Hales Iusticiariis Regis ad Gaolam Regis de Gippewyco deliberandum assignatis inde secundum legem et consuetudinem regni Regis acquietatus fuisset falso et maliciose procurauerunt ad graue dampnum ipsius Walteri et contra formam ordinacionis in huiusmodi casu prouise etc. Et vnde idem Walterus per attornatum suum queritur quod predicti Iohannes et alii conspiracione inter eos etc. ad Turnum vicecomitis Comitatus predicti tentum apud Blithford in eodem Comitatu die Sabbati in festo Exaltacionis sancte Crucis anno domini Regis nunc tercio procurauerunt quosdam Rogerum Carman et Ricardum Brakenest et alios socios suos Iuratores summonitos ibidem ad Turnum etc. inditari ipsum Walterum de Burgaria et asportacione predictis per quorum procuracionem ita indictati fuerunt etc. Et post modum die Mercurii die Mercurii [*sic*] proxima post festum sancti Michaelis proximo sequens eodem anno per indictamentum illud captus fuit et ductus etc. apud Gyppecum et ibidem in Gaola detentus vsque diem veneris proxima post festum Annun-

¹⁻² From *Y*; *G* has etc.

³ From *G*.

⁴ a sei, *G*.

fame throughout the countryside, and that they did not do so of malice. Ready to aver it. And in respect of the other four we tell you that they were indictors. Judgment.

Miggeley. We were imprisoned through their false procurement.

Toudeby. We tell you that they indicted him, and no man can procure himself.

BEREFORD C.J. to *Miggeley.* Were they of the inquest or were they not?

Miggeley. Not of the inquest. Ready.

And the other side joined issue.

Notes from the Record.

I.

De Banco Rolls, Hil., 5 Edw. II. (No. 190, r. 95d.,) Suffolk.

John Kempe, Hugh of Brook, Richard Sampson, William of Worstead of Beccles, Ralph of Appleton, John the Webster, William of the Green and John of Estrild of Beccles are in mercy for several defaults etc.

The same John and the others were attached to answer Walter Goscelyn of Kirkby of a plea why they, by a conspiracy previously had amongst them at Blythford, did falsely and of malice procure that the aforesaid Walter should be indicted of burglary of the house of Andrew the Glover at Beccles and of the felonious carrying away by the same Walter of his goods and his chattels to the value of five shillings and six pence, and that the same Walter by reason thereof should be seized at Lound and be taken to the King's gaol at Ipswich, and therein be imprisoned and in that prison be kept until that he was acquitted thereof in accordance with the law and custom of the King's realm in the King's Court before the King's beloved and faithful William of Ormsby and Roger of Hales, the King's Justices assigned to deliver the King's gaol of Ipswich, to the grievous damage of the same Walter and against the form of the statute¹ in such case provided etc. And touching this the same Walter doth by his attorney complain that the aforesaid John and the others by a conspiracy amongst them etc. at the Turn of the Sheriff of the county aforesaid held at Blythford in the same county on the Saturday that was the Feast of the Exaltation of the Holy Cross² in the third year of the lord King that now is did procure a certain Roger Carman and a certain Richard Brakenest and others that were their fellow jurors that were summoned to the Turn etc. to indict the same Walter of the burglary and asportation aforesaid, by which procurement he was so indicted etc. And afterwards, on the Wednesday next following after the Feast of St. Michael then next following in the same year he was arrested upon that indictment and taken etc. at Ipswich and was detained in the gaol in the same place until the Friday next after the Feast³ of the Annunciation of

¹ Statutum de Conspiratoribus (of uncertain date). See *Statutes of the Realm*, I. 216. ² September 14. ³ March 25.

Notes from the Record—continued.

ciacionis beate Marie eodem anno quo idem Walterus coram prefatis Iusticiariis ad Gaolam predictam deliberandum assignatis secundum legem et consuetudinem regni Regis fuisset acquietatus etc. vnde dicit quod deterioratus est et dampnum habet ad valenciam Centum librarum. Et inde producit sectam etc.

Et Iohannes et alii per attornatum suum veniunt Et defendunt vim et iniuriam quando etc. Et predicti Willelmus de Wurcestede et Iohannes de Estrild bene defendunt quod ipsi in nullo sunt culpabiles de conspiracione et transgressionem predictis quas eis imponit. Et de hoc ponunt se super patriam. Et Walterus similiter etc. Et predicti Iohannes le Webbestere et Willelmus de La Grene dicunt quod ipsi fuerunt summoniti ad Turnum vicecomitis predictum et ibidem venerunt tanquam duo quatuor hominum et propositi etc. et predictum factum ipsi simul cum sociis suis etc. legaliter presenterunt secundum communem famam etc. et non per conspiracionem etc. Et hoc parati sunt verificare etc. Et petunt Iudicium etc. Et predicti Iohannes Kempe Hugo Ricardus et Radulphus similiter dicunt quod ipsi fuerunt de Iuratoribus etc. per quos idem Walterus indictatus fuit ad Turnum predictum de predicto facto Et hoc pretendunt verificare etc. Et petunt Iudicium si idem Walterus vti debeat seu possit isto breui de conspiracione versus ipsos Iuratores etc.

Et Walterus dicit quod predicti Iohannes le Webbestere et Willelmus de la Grene non fuerunt de predictis quatuor hominibus etc. nec eciam predicti Iohannes Kempe et alii de predictis Iuratoribus etc. Immo quod ipsi maliciose per conspiracionem inter eos habitam procurauerunt ipsum Walterum indictari capi et imprisonari sicut idem Walterus queritur etc. Et hoc petit quod inquiratur per patriam. Et predicti Iohannes et alii similiter etc. Ideo preceptum est vicecomiti quod venire faciat hic a die sancte Trinitatis in xv. dies xij. etc. per quos etc. Et qui nec etc. Quia tam etc.¹

II.

Gaol Delivery Rolls (No. 63), 3 Edw. II., Ipswich, r. 32.

Wayneford. Willelmus le neue et Iohannes filius eius Walterus Gosselyn et Thomas le Mellere capti fuerunt pro eo quod indictati sunt ad turnum vicecomitis apud Blitheforde quod fregerunt domum Andree le glouere in villa de Bekles et quod depredauerunt eum de bonis et catallis suis ad valenciam .v. solidorum. Et predicti Willelmus Iohannes Walterus et Thomas venerunt. Et quesiti qualiter se velint inde acquietare et de bono et malo posuerunt se inde super patriam. Iuratores dicunt super sacramentum suum quod predicti Willelmus Iohannes Walterus et Thomas in nullo sunt inde culpabiles. Ideo ipsi inde quieti nec se retraxerunt.

¹ Nothing further has been recorded.

Notes from the Record—continued.

Blessed Mary in that same year, when the same Walter was acquitted before the aforesaid Justices assigned to deliver the aforesaid gaol according to the law and custom of the King's Realm etc.; whereby he doth say that he did suffer loss and had damage to the amount of a hundred pounds. And thereof he produceth suit etc.

And John and the others do come by their attorney and they deny force and wrong etc. And the aforesaid William of Worstead and John of Estrild deny that they are guilty of the conspiracy and trespass aforesaid with which the said Walter doth charge them. And of this they do put themselves on the country. And Walter doth the like etc. And the aforesaid John the Webster and William of the Green do say that they were summoned to the aforesaid Turn of the Sheriff and went to it as two of the four men and the reeve¹ etc.; and that they, together with their companions etc., did lawfully make the aforesaid presentment by reason of common report etc., and not by conspiracy etc. And this they are ready to aver etc. And they ask judgment etc. And the aforesaid John Kempe, Hugh, Richard and Ralph say in like manner that they were of the jurors etc. by whom the same Walter was indicted at the Turn aforesaid of the aforesaid deed. And they do offer to aver this etc. And they ask judgment if the same Walter can or ought to use that writ of conspiracy against them that were jurors.

And Walter doth say that the aforesaid John the Webster and William of the Green were not of the four men etc. nor eke were the aforesaid John Kempe and the others of the said jurors etc.; but that of malice and by a conspiracy had amongst them they did procure that the same Walter should be indicted, arrested and imprisoned even as the same Walter doth complain etc. And he doth ask that this be inquired of by the country. And the aforesaid John and the others do the like etc. So the Sheriff is charged that he make come here on the quindenens of the Holy Trinity twelve etc. through whom etc. And who are neither etc. Because both etc.

II.

Gaol Delivery Rolls (No. 63), 3 Edw. II., Ipswich, r. 32.

Wayneford.² William the Neve and John, his son, Walter Gosselyn and Thomas the Miller were taken because they were indicted at the Sheriff's Turn at Blythford for breaking the house of Andrew the glover in the vill of Beccles and for stealing his goods and chattels to the value of five shillings. And the aforesaid William, John, Walter and Thomas came. And they were asked how they would acquit themselves thereof, and they put themselves upon the country for good or ill. The jurors upon their oath do say that the aforesaid William, John, Walter and Thomas are not guilty thereof. So they are acquitted thereof. And they had not taken themselves out of the way.

¹ Four burgesses and the reeve oath of matters within their knowledge. were summoned to give evidence upon ² Qy. Wangford.

25. ANON.¹

Cosinage porte vers vn homme et sa femme ou il voucha a garrantie eux memes et fut resceu.

Vn homme enfeffa sa fille et son Baroun en fee² taille la³ fille feut ⁴son heir du saunk ⁵le pere deuia⁶ vint vn autre⁷ et porta son bref de cosinage⁸ vers le Baroun et sa femme qe voucherunt ⁹a garrantie¹⁰ eux memes.¹¹

Denom. ¹²Le bref est porte vers eux memes ¹³et¹⁴ il vouchent eux memes¹⁵ iugement de voucher.

¹⁶*Scrop.* Le pere nostre femme qi heir ele est nous enfeffa et nostre femme ioyntement et nous com purchassour auoms vouche nous com baroun et nostre femme heir du sanc nostre feffor.

Denom. Auxi bien pus [*sic*] ore respoundre com qant vous venet en court pur le voucher et del houre qe ceo voucher nest autre fors delaier nous de nostre demande iugement si a ceo voucher deyuent estre receu.¹⁷

¹⁸*Scroup.* Si cest voucher ne soit pas resceu si ensiwereit graunt duresse car si nous perdissoms ore naueroms pas a la value ¹⁹vers nostre femme etc. dount depuis qe ele est heir de sank nostre feffor etc. ou par cas autres tenemenz ly sunt descenduz queux nous naueroms a la value²⁰ sanz vocher etc. iugement.

²¹*Ber* a *Denom.* Sauez rien a dire²² par qi il ne deit voucher.

Denom. Vt supra.

Ber. Estoyse le voucher.

¹ Reported by *B, C, L, M, P, Q, T*. Text from *M* collated with the others. Headnote from *C*. ² forme, *B, C, Q*. ³ quel, *T*. ⁴⁻¹¹ le heir le feffour etc. issi qe vn bref de Cosinage fut porte vers le baroun et sa femme qe voucherent eux memes a garrantie, *T*.

⁵⁻⁶ *B* and *C* omit. ⁷ homme, *C*. ⁸ *P* has *Entre written over an erasure*. ⁹⁻¹⁰ Added from *C*. ¹²⁻¹⁴ *B* omits.

¹³⁻¹⁵ Added from *T*; for this *P* has qe sount vouches. ¹⁶⁻¹⁷ from *T*. *M* reads: *Scroup* le pere nostre femme enfeffa nous et nostre femme et ele est heir du saunk memes le pere et nous com purchassour vouchoms nostre femme com heir nostre feffour. *Denom* voucher ne deuez car a tiel respouns poez ore doner com vous porrez apres qant vous respoundrez pur le voucher iugement de puis qe vostre voucher nest mes qe a delayer nous de nostre dreit etc. si a cest voucher etc.

B, C, P and *Q* have the same, with small variations. ¹⁸ From this point to the end of the report *T* reads: *Scrop* si ceo voucher ne seit resceu et nous perdissoms nous nauereymes my ala valaue deuers nostre femme qe serreit grant duresse et del houre qe ley ne nous tondra nostre voucher mesqe nous seoms barre etc. nostre femme est heir du saunc et ad tenemenz par descent et tut nust ele purra auoir qe serreit en contre ley si nous nussoms garrantir ala vaillant si etc. iugement etc. *Berr* sauez assigner autre enchesoun de luy ouster de soun voucher et nesciuit etc. *Berr*. Non est inconueniens pur ceo qil nest mye regardaunt a vn mesure estat. Et garda la voucher etc.

¹⁹⁻²⁰ Supplied from *B, C* and *P*; *M* omits. ²¹⁻²² from *C*. *P* and *M* have: *Berr* sauez rien a dire a *Denom*.

25. ANON.

Writ of cosinage brought against a man and his wife, who vouched themselves to warranty, and the voucher is allowed.

A man enfeoffed his daughter and her husband in fee tail, the daughter being the heir of his blood. The father died. There came another who brought his writ of cosinage against the husband and his wife, who vouched themselves to warranty.

Denham. The writ is brought against themselves, and they are vouching themselves. Judgment of the voucher.

Scrope. The father of our wife, whose heir she is, enfeoffed us and our wife jointly, and we as purchasers have vouched ourselves as our wife's husband and our wife as heir of the blood of the feoffor.

Denham. You can answer as well now as when you come into court on the voucher ; and since that voucher is naught but an attempt to delay us in our claim, we ask judgment whether you ought to be received to that voucher.

Scrope. If this voucher be not received, then great hardship would follow ; for if we should lose, we could not get to the value from our wife etc., for since she is the heir of the blood of our feoffor etc., it may be that other tenements have descended to her of which we cannot have to the value unless we vouch etc. Judgment.

BEREFORD C.J. to *Denham.* Have you aught to say why he should not vouch ?

Denham as above.

BEREFORD C.J. Let the voucher stand.

26. STRODE *v.* ERGLEYS AND OTHERS.¹

Prise dun chiual en le haut estree porte vers vn baillif ou dit fut qe le bref ne gist pas vers baillif ou dit fut par agarde qe auxi auant vers baillif cum vers autre sil ne auoue pur cause.

Ion de Forde porta son bref forme sur statut² de son chiual pris en le haut estree en Brustoll Et counta qe de commune consail etc. a nuly lyst etc. estre le Roy.

les .iiij. diseint qe de reen copables.

Le quart dit qil fut baillif le Roy en bristoll et cesti bref ne gist pas vers baillif le Roy.

Berr. Cesti bref est ausi ben vers le baillif le Roy com vers autre sil ne face auouerie pur cause.

Denom. Nous vous dioms qil est bailiff de la vile de B. en quele vile ily ad fraunchise qil pussent conustre de trespas fet deinz lur fraunchise iescun ior en la simeyne. Et pur ceo qe vn Richard se attacha de siwere vers mesmes cesti Ion en play de trespas par qi le baillif le voleit auer attache a respoundre a dit Richard et il cel attachement ne voleit sufferer eynz etc. issi il com baillif prit cel chiual en luy de attachement com been ly lust etc.

Migg. Vous le preytes par vostre malice demesne et noun pas par resoun de office pret etc.

Et alii e contra etc.

Note from the Record.

De Banco Plea Rolls, Hil., 5 Edw. II. (No. 190), r. 129, Gloucestershire.

Stephanus Ergleys Iohannes Ergleys Willelmus de Anefeld Laurencius de Kary Henricus de Kairwent Ricardus de Lemyinistre Ricardus le Packare de Bristoll et Willelmus attewere le suur in misericordia pro pluribus defaltis etc.

Idem Stephanus et alii attachiati fuerunt ad respondendum Iohanni de la Strode de placito quare cum de communi consilio regni Regis prouisum sit quod non liceat alicui de regno Regis districciones facere extra feodum suum neque in regia aut communi strata nisi domino Regi et Ministris suis specialem auctoritatem ad hoc habentibus predicti Stephanus et alii qui Ministri Regis non sunt etc. quemdam equum ipsius Iohannis de la Strode

¹ Reported by G. Names of the parties from the Record.

² Statute of Marlborough, 52 Henry III, cap. xv.

26. STRODE *v.* ERGLEYS AND OTHERS.

A writ is brought under the Statute of Marlborough against a bailiff for seizing a horse in the high street. It is argued that such a writ doth not lie against a bailiff, but the Court ruleth that it lieth as well against a bailiff as against another, if he cannot avow for cause.

John of Ford brought his writ formed on the statute¹ in respect of the seizure of his horse in the high street of Bristol. And he counted that by the Common Council etc. no one might etc., except the King.

Three of the defendants said that they were not guilty.

The fourth said that he was bailiff of the King in Bristol, and this writ lieth not against the bailiff of the King.

BEREFORD C.J. This writ doth lie as well against the bailiff of the King as against any other bailiff, if he cannot make avowry for cause.

Denham. We tell you that he is bailiff of the vill of B., and this vill hath such a franchise that it may try any plea of trespass committed within the franchise on any day of the week. And, because one Richard bound himself to prosecute this same John in a plea of trespass, the bailiff wanted to attach him to answer the said Richard; but John would not suffer this attachment but etc., so that Richard, as bailiff, seized this horse in the stead of attachment, as he was well entitled to do etc.

Migeley. You seized it of your own malice and not because of your office. Ready etc.

And the other side joined issue.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 129, Gloucestershire.

Stephen Ergleys, John Ergleys, William of Anefield, Lawrence of Carey, Harry of Kairwent, Richard of Leominster, Richard the Packer² of Bristol and William at Ware the suor³ are in mercy for several defaults.

The same Stephen and the others were attached to answer John of the Strode of a plea why, seeing that it had been provided by the Common Council of the King's realm that it should not be lawful for anyone of the King's realm to levy distress outside his own fee, nor in the King's highway nor in the common street, saving for the lord King only and his ministers having special authority therefor, the aforesaid Stephen and the others, that are not ministers of the King etc. a certain horse, the property of the

¹ Statute of Marlborough, 52 Hen. III, cap. xv. packing or the supervision of the packing of exported goods liable to custom etc.

² *I.e.* an officer charged with the

³ *I.e.* the sutor or shoemaker.

Note from the Record—*continued.*

in regia strata apud Bristolle contra formam prouisionis predictae ceperunt et imparcauerunt et eum diu imparcatum detinuerunt contra legem et consuetudinem regni Regis et contra pacem etc. Et vnde idem Iohannes per attornatum suum queritur quod predicti Stephanus et alii die Martis proxima ante festum sancti Valentini Anno domini Regis nunc quarto in regia strata ville Bristolle ceperunt predictum equum etc. contra formam prouisionis predictae et contra legem et consuetudinem regni etc. et contra pacem etc. vnde dicit quod deterioratus est et dampnum habet ad valenciam Centum solidorum Et inde producit sectam etc.

Et Stephanus et alii per attornatum suum veniunt Et defendunt vim et iniuriam quando etc. Et iidem Stephanus et alii preter predictum Henricum de Kairwent etc. bene defendunt quod ipsi in nullo sunt culpabiles de transgressione predicta etc. Et de hoc ponunt se super patriam Et Iohannes similiter etc. Et predictus Henricus dicit quod ipse predictis die et anno fuit Ballius Regis ville Bristolle sub Constabulario Castri Bristolle etc. Qui quidem Constabularius et Balliui ville predictae habent iurisdictionem Cognoscendi de transgressionibus factis in villa predicta singulis diebus etc. Et dicit quod quidam Iohannes Ergleys attachiauit se ad prosequendum versus predictum Iohannem de la Strode de quadam transgressione quod idem Iohannes de la Strode ceperat a domo ipsius Iohannis Ergaleys in villa predicta duas Aunderas et eas contra voluntatem suam asportauerat etc. per quod idem Henricus vt Ballius etc. voluit attachiasse ipsum Iohannem de la Strode per predictum equum et eo quod noluit inuenire plegios ad respondendum etc. et in diffugiendo vsque regiam stratam cepit ipse equum illum itaque in regia strata etc. et non contra pacem etc.

Et Iohannes de la Strode dicit quod predictus Henricus simul cum aliis supradictis de iniuria et malicia sua et non occasione predicta cepit predictum equum suum in regia strata ut predictum est. Et hoc petit quod inquiratur per patriam. Et predictus Henricus similiter etc. Ideo preceptum est vicecomiti quod venire faciat hic a die sancte Trinitatis in xv. dies xij. etc. per quos etc. Et qui nec etc. Quia tam etc.¹

27. ANON. v. ROBERT OF CLARE.²I.³

De dote ou vne femme demanda dower de tenementz donez a son baroun et a sa primere femme en fee taille et ne prist riens.

Vne femme porta bref de douwer vers Robert de Clare de Gloucestre gardeyn de terre et de corps fitz et heir etc.

¹ Nothing further has been recorded in the matter.

² Reported by *D* twice.

³ Text of (I) from *D*, second version.

Note from the Record—continued.

said John of the Strode, in the King's highway at Bristol did seize against the form of the statute aforesaid, and it did impark and imparked did keep for a long time, against the law and custom of the King's realm and against the peace etc. And, in respect of this, the same John doth by his attorney complain that the aforesaid Stephen and the others upon the Tuesday next before the Feast of St. Valentine in the fourth year of the lord King that now is in the King's highway in the vill of Bristol did take the same horse etc. against the form of the aforesaid statute, and against the law and custom of the realm etc. and against the peace etc. And he doth say that he hath suffered loss thereby and hath damage to the amount of a hundred shillings. And he doth produce suit thereof etc.

And Stephen and the others do come by their attorney and deny force and wrong when etc. And the same Stephen and the others, excepting the aforesaid Harry of Kairwent etc. deny that they are in aught guilty of the aforesaid trespass etc. And of this they do put themselves on the country. And John doth the like etc. And the aforesaid Harry doth say that on the day and year aforesaid he was bailiff of the King in the vill of Bristol under the Constable of the Castle of Bristol etc. ; the which Constable and bailiffs of the aforesaid vill have jurisdiction to hold pleas of trespasses done in the said vill on any day etc. And he doth say that a certain John Ergleys attached himself to prosecute the aforesaid John of the Strode of a certain trespass, to wit, that the same John of the Strode had taken from the house of the said John Ergleys in the vill aforesaid two andirons and them against his will, had carried away etc., wherefore the same Harry as Bailiff etc. had it in mind to attach the said John of the Strode by the aforesaid horse, and because he would not find pledges to answer etc. ; and the said John ran with the horse on to the King's highway, and the said Harry seized that horse ; and in these circumstances in the King's highway etc. and not against the peace.

And John of the Strode doth say that the aforesaid Harry together with the others aforesaid did take the aforesaid horse on the King's highway of their own wrongdoing and malice, as is aforesaid, and not in the circumstances alleged by them. And he doth ask that this be inquired of by the country. And the aforesaid Harry doth the like etc. Therefore the Sheriff is charged that he make to come here in the quindenes of the Holy Trinity twelve etc. through whom etc., and who are neither, because both etc.

27. ANON. *v.* ROBERT OF CLARE.

I.

Dower, where a woman claimed dower of tenements given to her husband and to his first wife in fee tail and took naught by her writ.

A woman brought a writ of dower against Robert of Clare of Gloucester, guardian of the land and person of the son and heir etc.

Herle. Ele ne deit douwer auer qe les tenementz dount ele demande dower furent en la seisine etc. qi les dona a sa baroun et a sa primere femme et a les heirs de lour .ij. corps engendrez issint qe son baroun nauoit qe fee taille iugement etc.

Frisk. Nous voloms auerrer qe nostre baroun fu seisi issint qe dower nous pout.

Scrope. Nous auoms conu lestat qe nostre baroun auoust [*sic*] dont si vous voletz estre a iugement il couent qe vous grantez cel estat ou dediezt si qil auoit fee simple et sur ceo tendre vn auerrement.

Frisk. A dire qe nostre baroun auoit fee simple la ley ne nous chacera pas qe la ou tenementz soient donez a vn home et a les heirs de son corps engendrez la femme auera douwer et la ou tenementz sont donetz a vn home et a sa femme et a les heirs de lour deux corps engendrez et sil deuiassent sanz heirs qe les tenementz remaignent as droitz heirs le baroun la seconde femme auera dower et si nad le baroun qe fee simple en lun cas ne en lautre et poet estre qe nous sumes en le cas.

Ber. Dites issint et demorez en iugement ou dites qil auoit fee simple etc. ou contez lestat qil dient.

Frisk. conust lestat le baroun en fee taille.

Et habuit diem in octabis sancti Martini ad quem diem—

Herle. dit qele ne dust dower auer racione predicta.

Frisk. Al auncienne lei le baroun pout aliener par qi la femme auera douwer mes cest restreint par statut¹ qe alienacioun est defesable mes statut ne oust my femme de dower iugement.

Herle. La volunte le donour est qe les tenementz deiuent resortir ou descendre apres la mort la femme en fee taille mes si ele seit dowe la volunte le donour est voide iugement.

Frisk. Par statut lalienacioun le baroun en fee taille est restreint mes ne my femme dower ergo ele poet douwer auer.

Ber. Si home et sa femme vssent aliene auant statut etc. ceo serreit defesable apres sa mort.

Frisk. Forme de doun en le descendere est done par statut mes auant le heir pria auer le mordancestor ergo la femme auereit dower et le statut ne la ouste mye iugement.

¹ Statute of Westminster II. cap. i.

Herle. She ought not to have dower, for the tenements of which she claimeth dower were in the seisin of etc., who gave them to her husband and to his first wife and to the heirs of their two bodies engendered; and so her husband never had more than a fee tail. Judgment etc.

Friskenev. We will aver that our husband was seised of such an estate that he could dower us.

Scrope. We have declared what estate our husband had. If, then, you want to be at judgment, you must admit that estate, or deny it, if he had fee simple, and tender an averment in respect thereof.

Friskenev. The law will not force us to say that our husband had fee simple, for where tenements are given to a man and to the heirs of his body begotten the wife shall have dower; and where the tenements are given to a man and to his wife and to the heirs of their two bodies engendered, and it is provided that if they die without heir the tenements are to remain to the right heirs of the husband, the second wife will have dower; and the husband hath no more fee simple in the one case than in the other; and it may be that the circumstances are like here.

BEREFORD C.J. Say so, and abide judgment on it, or say that he had fee simple etc., or count of such estate as the other side saith that he hath.

Friskenev admitted that the husband had an estate in fee tail.

And he had a day in the octaves of St. Martin, on which day—

Herle said that she ought not to have dower for the reason given.

Friskenev. By the ancient law the husband could alienate, but the wife would have her dower. But this is [now] restrained by statute,¹ for alienation is defeasible; but the statute doth not deprive the wife of her dower. Judgment.

Herle. The intention of the donor is that the tenements should resort or descend after the death of the wife in fee tail; but, if she is to have dower, the intention of the donor will be frustrated. Judgment.

Friskenev. Where the husband holdeth in fee tail, alienation is forbidden by the statute, but the wife's dower is not taken away. Therefore she can have dower.

BEREFORD C.J. If a man and his wife have alienated before the statute etc., such alienation would be defeasible after their death.

Friskenev. Formedon in the *descender* is given by the statute,² but previously the heir prayed to have the mortdancestor. Therefore the wife would have been entitled to dower, and the statute doth not deprive her of it. Judgment.

¹ Statute of Westminster II. cap. i.

² *Ibid.*

Byngh. Nous auoms vewe le mordancestor estre abatu en ceo cas auant statut et pur ceo qil nauoit my fee simple et dist entre queux persones.

Ber. Voletz autre chose dire.

Frisk. Il nous semble qe ceo nous suffist.

Ber. Et lei ne voet my en ceo cas qe lissue de la seconde femme poet emporter del heritage par qi il serroit encountre la volonte le donour Et dautrepart ele ad grante qe sa baroun naueit pas fee simple issint qe douwer la pout si agarde la court qe le [*sic*] ne preigne riens par sa bref.

II.¹

De dote ou la partie tenante dit qe le baroun nauoit qe fee taille a ly e a sa primere femme et la femme tendi qe ceo fust heritage le baroun Et nota qe si troue fut qil nauoit qe fee taille la femme ne prendra riens.

Vne femme porta bref de douwer.

Herle. Vos ne deuetz douwer auer par la reson qe vostre baroun nauoit riens en les tenementz si noun en fee taille a lui et a Maud sa primere femme et a les heirs de lour deux corps engendrez.

Scrope. Nous voloms auerrer qe nostre baroun fut seisi en fee issint qe dower nous pout.

Scrope Justice. Il couent qe vos diez qe vostre baroun fu seisi auxi come de fee simple etc. ou qe vous conussetz ceo qil vnt dit qil auoit fee taille etc. demorroms en iugement etc.

Scrope. En cas ou tenementz soient donetz a vn home et a les heirs de son corps issauntz et sil moergent sanz heirs qe les tenementz demorgent as droits heirs le baroun etc. si auera la seconde femme douwer et poet estre qe les tenementz furent donez a nostre baroun en mesme la manere par qi ne nous chaceri [*sic*] pas a trauerser qil fut seisi come de fee simple.

Herle. Ut supra.

Scrope. Nous vous dioms qe les tenementz dont nous demandoms douwer furent en la seisine vn Milon pere nostre baroun qe de ceux morust seisi apres qi mort nostre baroun entra come fuitz et heir et issint fut il seisi come de fee en la manere come nous auons dit.

Herl. Qil fut seisi come de fee taille le iour qil esposa ne vnqes puys fee simple nauoit prest etc.

Et alii e contra ideo ad patriam.

¹ Text of (II) from *D*, first version.

Bingham. We have seen the mortdancestor abated in similar circumstances before the statute, because the estate was not fee simple—and he said between what persons.

BEREFORD C.J. Do you want to say aught else ?

Friskenev. It seemeth to us that what we have said is enough.

BEREFORD C.J. The law doth not contemplate the issue of the second wife taking of the heritage in these circumstances, for it would be contrary to the intention of the donor. And, further than this, the plaintiff hath admitted that her husband had not an estate in fee simple so that he could dower her. The Court awardeth that she take naught by her writ.

II.

Writ of dower, where the defending tenant said that the plaintiff's husband had only a fee tail to himself and his first wife ; and the claimant offered to aver that her husband had an estate in fee simple. And note that if it be found that the husband had only a fee tail the wife will take naught.

A woman brought a writ of dower.

Herle. You ought not to have dower, for your husband had naught in the tenements except in fee tail to himself and Maud, his first wife, and to the heirs of their two bodies engendered.

Scrope. We will aver that our husband was seised in fee so that he could dower us.

SCROPE J. You must say that your husband was seised as of fee simple etc., or that you admit what they have said, that he had a fee tail etc., and that you abide judgment etc.

Scrope. Where tenements are given to a man and to the heirs of his body, and it is provided that if he die without issue the tenements are to remain to the right heirs of the husband etc., the second wife will have dower. It may be that these tenements were given to our husband in this manner, and therefore you cannot drive us to traverse [your allegation and say] that he was seised as of fee simple.

Herle as above.

Scrope. We tell you that the tenements of which we are claiming dower were in the seisin of one Miles, father of our husband, who died seised of them ; and after his death our husband entered as son and heir ; and so he was seised as of fee in the manner we have stated.

Herle. That he was seised as of fee tail on the day he married, and never after had fee simple. Ready etc.

And the other side joined issue. And so to the country.

28. ANON v. LESTRANGE.¹

De dote porte vers gardeyn ou il [aueit] franc tenement en partie de tenementz.

Vne A. porta bref de douwer vers Fouk lestrange gardeyn de terres et del heir T. Corbet et demanda la terce partie du Manoir de C.

Wilb. Qant al terce partie du manoir de C. nous clamons franc tenement et ele demande vers nous come vers gardeyn iugement du bref.

Denum. Qi responetz vous de remanant.

Wilb. Cest vn precipe qe ne voet nient estre abatu par parcelles.

Scrop Justice. Respounetz qe cest vn bref de douwer etc.

Scrop. T. Corbet baroun mesme ceste Maud tient de nous le manoir entier le quel T. hors de sa seisine enfeffa vn Iohan lestrange en fee a tenir de chef seignurage de fee et nous sumes chef seignur etc. le quel Iohan fu bastard apres qi mort nous sumes einz come en nostre eschete et tiel estat clamoms iugement.

Denum. Nous voloms auerrer qe nostre baroun morust seisi del manoir entier et vous apres sa mort entrastes come gardeyn en clamant la garde et cel estat auetz continue iusques en cea prest etc.

Scrope Justice. Sil eit franc tenement ceo est fait a lui pleder oue nos come gardeyn qe issint freit il son damage et par cas sereit desherite.

Denum. Vt supra.

Scrope. Qe Iohan le estrange tent cele terre de nos et fust bastard et morust seisi etc. apres qi mort nous entrames come en nostre escheat prest etc.

Denum. Le baroun morust seisi del manoir entier vt supra prest etc.

Et sic ad patriam.

29. ANON.²I.³

De dote ou vne femme demanda dower de comune de pasture et fu le bref agarde bon.

Vne femme porta bref de douwer de la terce partie de .vj. acres de terre et de .xv.s. de rentes et .iiij.d. et la terce partie de comune .vj.^{xx} acres de more et de pasture de comuner oue la terce partie de .xj.^{xx} gros beofs et de .viiij.^{xx} berbiz a comuner pur tut lan.

¹ Reported by *D*.

² Reported by *D* and *Z*.

³ Text of (I) from *D*.

28. ANON *v.* LESTRANGE.

Writ of dower brought against the guardian who claimed to have a freehold in part of the tenements.

One A. brought a writ of dower against Fulk Lestrangle, guardian of the lands and of the heir of T. Corbet, and claimed the third part of the manor of C.

Willoughby. As to the third part of the manor of C. we claim freehold; and she is claiming from us as from a guardian. Judgment of the writ.

Denham. What answer do you make as to the residue?

Willoughby. This is a writ which cannot be abated in parcels.

SCROPE J. Answer, for this is a writ of dower etc.

Scrope. T. Corbet, husband of this same Maud, holdeth the entire manor of us. This T. did out of his seisin enfeof one John Lestrangle in fee to hold of the chief lords of the fee; and we are chief lord etc. This John was a bastard, and upon his death we entered as into our escheat, and that is the estate we claim. Judgment.

Denham. We will aver that our husband died seised of the entire manor, and that you entered after his death as guardian, claiming the wardship; and that estate you have continued up to now. Ready etc.

SCROPE J. If the defendant claim a freehold, that is a fact which he must plead before us, for, if he answer as guardian, that would be to his damage, and, possibly, to his disherison.

Denham as above.

Scrope. That John Lestrangle held that land of us and was a bastard and died seised etc., and that upon his death we entered as into our escheat, ready etc.

Denham. The husband died seised of the entire manor, as above, ready etc.

And so to the country.

29. ANON.

I.

Writ of dower, where a woman claimed dower of common of pasture, and the writ was ruled good.

A woman brought a writ of dower of the third part of six acres of land and of fifteen shillings and four pence of rent, and the third part of common of six score acres of moorland and pasture, and the right of commoning thereon throughout the year with the third part of eleven score fat oxen and eight score sheep.

Wilb. Jugement de sa demoustrance qe la ou ele demande la terce partie de comune et dit qe ceo fut de franc tenement son baroun et ne chiet pas en demesne ne son baroun ne poet pas vser son bref de novele disseisine iugement.

Denum. De feez de auowesons poet home vser lassise qe nest nul franc tenement si auera la femme douwer et pur ceo donetz nous autre bref.

Wilb. Ieo met mon chalenge a vostre demustrance qest en lieu de vostre counte.

Denum. Qi responetz vous del remanant.

Wilb. Le Nuper Obiit voet racionabilem dotem suam et si vous contez mauueys conte si poet home chalenger mauueys conte sic ex parte ista.

Ber. Nest semblable de cesti [bref] de douwer et del autre bref et pur ceo responetz del remanant.

Wilb. qant al remanant demande la vewe et habuit et qant al comune vt supra.

Ber. Ele poet autre bref auoir.

Wilb. La vewe et habuit.

II.¹

Dower ou la demande fust de comune de pasture.

En vn bref de dower qe voleit racionabilem dotem que eam contingit de libero tenemento la demande fust a comuner en certeyn nombre des acres oue la terce partie de certeyn noubre des auers et le bref chalenge pur ceo qil ne fust garranti par la demande et le bref agarde bon non obstante qe pur le baroun lassise est done de comuna pasture etc.

30. CURLU v. CURLU.²

Nota qe si le tenant die qe la femme ad certains chartres par les queux son piere purchacea etc. ele ne voille les chartres bailler etc. la femme nauera pas sa dower auant ceo qele eit rendu les chartres et tot die la femme qe le tenant ad autres parceners qe tenent la terre comprises en les chartres vngore le tenant les auera et les autres parceners auerount accion a demander les vers le tenant.

¹ Text of (II) from Z.

² Reported by Z. Name of the parties from the record.

Willoughby. Judgment of her demonstrance, for whereas she claimeth the third part of a right to common, and saith that it was of the freehold of her husband, the right to common doth not fall within the demesne of her husband, and you could not have a writ of novel disseisin [for its recovery]. Judgment.

Denham. A man may have the assize for the recovery of advowsons, which are not freeholds, [and] the wife will have her dower from them. So give us another writ.

Willoughby. I am objecting to your demonstrance, which is in lieu of your count.

Denham. What do you answer in respect of the residue?

Willoughby. The *nuper obiit* runs 'for her reasonable dower,' and if you count a bad count it is challengeable as a bad count. So here.

BEREFORD C.J. You cannot compare this writ of dower with the other writ, and so answer as to the residue.

Willoughby as to the residue asketh the view—and he had it—and, as to the right to common, he saith as above.

BEREFORD C.J. She can have another writ.

Willoughby. The view—and he had it.

II.

Dower, where common of pasture was claimed.

In a writ of dower which claimed the reasonable dower appertaining to the claimant from a freehold, the claim was to common in a certain number of acres with the third part of a certain number of cattle; and the writ was challenged because it did not correspond with the claim, but it was ruled good, notwithstanding the fact that the husband can have the assize for common of pasture etc.

30. CURLU *v.* CURLU.

Note that if the tenant say that the woman hath certain charters witnessing that her father purchased etc. and will not give up the charters etc., she shall not have her dower before she hath surrendered the charters; and though the woman say that the tenant hath other parceners that hold the land comprised in the charters, yet the tenant shall have them, and the other parceners will have their action to claim them from the tenant.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 73d., Norfolk.

Alicia que fuit vxor Ricardi Curlu per Rogerum Est attornatum suum petit versus Thomam Curlu terciam partem vnus acre terre cum pertinenciis in Stynekeye vt dotem suam etc. ex dotacione predicti Ricardi quondam viri sui etc.

Et Thomas per Thomam de Crek attornatum suum venit Et dicit quod post mortem predicti Ricardi etc. quedam carta deuenit in manibus predictae Alicie in qua continetur decem messuagia sexaginta et duodecim acre terre vnum molendinum aquaticum et dimidium et quadraginta solidate redditus cum pertinenciis in Stynekeye de hereditate ipsius Thome vnde dicit quod si predicta Alicia velit predictam cartam ei liberare paratus est ei dotem suam predictam reddere etc.

Et Alicia dicit quod post mortem predicti Ricardi etc. predicta carta in qua predicta tenementa continentur nunquam deuenit in manibus ipsius Alicie sicut predictus Thomas asserit Et hoc petit quod Inquiratur per patriam. Et Thomas similiter. Ideo preceptum est vicecomiti quod venire faciat hic a die Pasche in tres septimanas .xij. etc. per quos etc. Et qui nec etc. ad recognizandum etc. Quia tam etc. Ad quem diem vicecomes non misit breue. Ideo sicut prius preceptum est vicecomiti quod venire faciat hic a die sancte Trinitatis in xv. dies .xij. etc. per quos etc. Et qui nec etc. Quia tam etc. Et vicecomes sit etc.¹

31. ATTE WYCHE, WHYTE, CHICHELE ET RICHARD
v. THE ABBOT OF BEC-HERLOWYN.²

Monstrauerunt de antiquo dominico Corone Regis ou dit fut qil furent vileinz.

Quatre hommes del maner de Holeburne³ porterunt le monstrauerunt vers labbe de Bekehel et counterunt qe labbe atort les traueilla etc. et demanda autres custumes et seruiçes etc. et pur ceo atort qe le⁴ maner de Holeburne fust en la seisine William le conquerour en qi tens chescun home tenant de vne verge de terre de mesmes le maner deuoit fere certains seruiçes etc. et issint ⁵le tiendront il chescun tens⁶ de auncestre en auncestre tant qe le maner vient en la mein le Roy Ion qe ceu maner dona al abbe et cesti abbe demande vileine seruiçes etc.

¹ Nothing further has been recorded in the matter.
and *R.* Text from *R* collated with *G.* Headnote from *G.* Names of the parties from the Record.

³ Okeburge, *G.*

² Reported by *G.*

⁴ par la ou celi, *G.*

⁵⁻⁶ tindrent eus, *G.*

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 73d., Norfolk.

Alice that was wife of Richard Curlu claimeth by Roger Est her attorney from Thomas Curlu the third part of one acre of land with the appurtenances in Stickney¹ as her dower etc. of the endowment of the aforesaid Richard, aforetime her husband etc.

And Thomas doth come by Thomas of Creak his attorney. And he saith that after the death of the aforesaid Richard etc. a certain charter came into the hands of the aforesaid Alice in the which charter are contained ten messuages, seventy-two acres of land, one water-mill and the half of one, and forty shillings of rent, with the appurtenances, in Stickney, of the inheritance of the said Thomas; touching which he saith that if the aforesaid Alice will surrender the aforesaid charter to him he is ready to render her her aforesaid dower etc.

And Alice saith that never after the death of the aforesaid Richard etc. did the aforesaid charter in which the aforesaid tenements are contained come into the hands of the same Alice as the aforesaid Thomas doth assert. And she asketh that this be inquired of by the country. And Thomas doth the like. So the Sheriff is charged that he make to come here three weeks after Easter twelve etc. through whom etc., and who are neither etc. to make recognition etc. Because both etc. On which day the Sheriff sent no writ. So, as before, the Sheriff is charged that he make to come here on the quindenes of the Holy Trinity twelve etc. through whom etc., and who are neither etc. because both etc. And the Sheriff is to be etc.

31. ATTEWYCH, WHYTE, CHICHELE AND RICHARD v. THE ABBOT OF BEC-HERLOWYN.²

Monstrauerunt of the ancient demesne of the Crown of the King; where it was pleaded that the plaintiffs were villeins.

Four men of the manor of Oakbourne³ brought the *monstrauerunt* against the Abbot of Bec-Herlowyn and counted that the Abbot did wrongfully travail them etc., and did claim other customs and services etc.; and wrongfully because the manor of Oakbourne was in the seisin of William the Conqueror, in whose time every man that held a virgate of land of the same manor was bound to render certain services etc., and in such way they held it each time from ancestor to ancestor until the manor came into the hands of King John, who gave this manor to the Abbot, and this Abbot doth demand villein services etc.

¹ Stickney is nine miles north-east of Boston.

² See the *Introduction*, p. xxxv.

³ Ogbourne-St. George or Great Okebourne is in Wiltshire, three and a half miles north-east of Marlborough. A Benedictine priory, a cell to Bec-

Herlowyn Abbey in Normandy, was founded here in 1149 by Maud of Wallingford. On the dissolution of the monasteries it was given to King's College, Cambridge, and to the Charterhouse.

Hle. defendit tort et force et dist qil ne deuient estre respoundus qil sunt ces¹ vileins.

Hedoun. Ceo ne poez dire car il sont gentz del aunciene demesne le Roy del maner de Holeburne² prest de auerer etc.

Hle. Ceo ne poez dire car autre feoz portastes ceinz ensemblement oue autres au tiel bref en commune baunk a quel bref labbe ³dist qil ne dussont estre respounduz pur ceo qil furent ces vileins et il disseint cum il fount ore qil furunt del aunciene demesne del maner de Holeburne le Roy Et pur ceo qili aueint deus Hokeburnes sauer Hokeburne le Roy Et Hokeburne Mill la court voleit estre acerte de quel Hokeburne il furont il diseient ke de Hokeburne le Roy Labbe dist ke de Hokeburne Mill et sur ceo enqueste se ioint par quele enqueste fust troue qe de Hokeburne Mill⁴ par quei fust agarde qe labbe alast a dieu sanz iour et qe eux ne pristeront riens par lour bref et desicum autre feoz furont rebotes cum noun responsables sulum ceo qe vous trouez par record qe vous auet seinz iugement sil deuient estre respounduz.

Scrop. Vostre respouns se esteint a .ij. choses sauer qil ne deuient estre respondus pur ceo qil sount vos vileins et ne sont pas del aunciene demesne prenez vous a vn et nous vous responderoms.

Hle. Nous vous dioms qil sont nos vileins et a nul auerement ne pount il attendre encountre le record a dire qil sount del aunciene demesne racione supradicta.

⁵*Denum.* Si vous volet dire qil ne deuunt estre respounduz pur ceo qil sont vos vilains tenez vous a ceo et nous vous responderoms.

Hle. Nous le dioms.⁶

Scrop. Ceo ne poez dire car autrefeoz pledastes oue nous com fraunk hommes et enqueste se ioint entre nous sanz reclamer estat de vileinage en nostre persone iugement.

⁷*Hle.* Qant vous dettes qe vous fustes del aunciene demesne la court de son offiz maundi pur domesday pur estre acerte et pur ceo qil trouerunt Hokeburn qe fust la terre le Roy etc.⁸

Malm. Vous loinastes lauerement vers nous cum vers vn estrange sanz moustrer⁹ vostre primer excepcioun et issint entre lessastes en

¹ nos, *G.* ² Okbury, *G.* ³⁻⁴ allega villenage etc. Ou eus diseint com il funt ore par qi Domesday fut enquis et troue fut qil furent deus Okeburnes scilicet au Roy et a Miles Crispin. Et pur ceo qe ly auoyt .ij. maners de Okeburne la court voleit estre encerte de quel il furent. Et il dysient qe de Okeburne le Roy. Et labbe le reuers et sor ceo enqueste se ioiynt par qel enqueste fut troue qil furent de Okeburne Miles et nent de Okeburne le Roy, *G.* ⁵⁻⁶ *G.* omits.

⁷⁻⁸ *Herle* rehersa le proces vt supra, *G.*

⁹ continuer, *G.*

Herle defended wrong and force and said that they ought not to be answered, for they are the Abbot's villeins.

Hedon. You cannot say that, for they are men of the ancient demesne of the manor of Oakbourne Regis. Ready to aver etc.

Herle. You cannot say that, for aforetime you, together with others, brought here in Common Bench a like writ, to which writ the Abbot said that the plaintiffs ought not to be answered, for that they were his villeins, and they said, as they say now, that they were of the ancient demesne of the manor of Oakbourne Regis. And for that there were two Oakbournes, to wit, Oakbourne Regis and Oakbourne Miles,¹ the court desired to be certified of which Oakbourne they were, and they said that they were of Oakbourne Regis. The Abbot said that they were of Oakbourne Miles. And upon this inquest was joined; and the inquest found that they were of Oakbourne Miles. Wherefore it was adjudged that the Abbot should go away without day, and that the complainants should take naught by their writ; and seeing that they were at other time rebutted as not entitled to be answered, as you find in the record which you have here, judgment if they should [now] be answered.

Scrope. Your answer extendeth over two things, to wit, that they ought not to be answered because they are your villeins, and because they are not of the ancient demesne. Betake you to one or the other, and we will reply to you.

Herle. We tell you that they are our villeins, and they cannot get to any averment saying that they are men of ancient demesne against the record, for the reason stated.

Denham. If you want to say that they ought not to be answered because they are your villeins, hold you to that, and we will reply to you.

Herle. That is what we say.

Scrope. You are not entitled to say that, for aforetime you pleaded against us as against free men, and inquest was joined between us without your challenging estate of villeinage in our persons. Judgment.

Herle. When you said that you were of the ancient demesne, the Court, in accordance with its duty, sent for Domesday, that it might be certified; and because they found that Oakbourne that was the King's land etc.²

Malberthorpe. You joined averment against us as against a stranger without maintaining your former exception, and so in the joinder of

¹ *Quere* the modern Ogbourne-St-Andrew or Little Oakbourne.

² It is difficult to say what is latent in this 'etc.'

¹le ioindre de lenqueste la excepcioun de vilaignage² et pledastes a nous cum a ³fraunk home.⁴

Hle. Si vous euset porte vostre bref de trespas vers labbe ou ⁵autre bref⁶ et il vst mis auant excepcioun de vileinage en countre vous et vous aprouer⁷ vostre fraunchise vset mis auant quiteclame ou autre fet qe labbe vst dedit et ⁸sur ceo pais se ioint et⁹ lenqueste passast encountre vous par tant ne serreit pas enfraunchi einz serreit en affermaunt la¹⁰ primere excepcioun auxi par de sa.

Frisk. ¹¹*ad idem.*¹² Si labbe les voleit reboter ¹³de accion par voie de¹⁴ excepcioun de vileinage et eux alegiasent en countre li qil fust seisi de lour¹⁵ homage et il dist qe noun et sur ceo pais se ioint et troue fust qil ne fust pas seisi¹⁶ eux serreient rebote et de ceo prendre nul auantage auxi par de cza.

Rouburi. Par tiele enqueste qe vous alleget ne furent il pas trouez qil furent vileins par quei par cele enqueste ne vous poez eider de eux reboter.

Hle. Nous ne bioms pas a dereiner les cum nos vileins ¹⁷einz seulement a reboter et autre fez qant labbe allegga cele excepcioun en countre eux il naueint rien a eux eider si noun qil furunt del aunciene demesne del maner de Hokeburne le Roy ou troue fust qe noun par quei il furent adonqe rebotez et unkore demurent par mesme la resun noun responsables.

Brabason. Il dient qe vous auez plede oue eux come oue fraunk sanz continuer vostre primer excepcioun et en ioinant vostre enqueste purret auer dist qil ne furent pas de okeburne le Roy einz vos vileins de Okeburne Mill et vous poez auer issue de autre ceste sanz fere mencion del vileinage.

Pass. Nous deimes al commencement qil ne dussent estre respounduz etc. et a eus fere responsables diseint qil furent del aunciene demesne mes pur ceo qe troue fust par domesdai qil iaueint .ij. okeburne et la court ne¹⁸ pout estre acerte de li mesmes par quei demandoms iugement.¹⁹

Note from the Record.

Coram Rege Rolls, Hil., 5 Edw. II. (No. 207), r. 82, Wiltshire.

Idem Abbas [sc. de Becco Herlewyni] summonitus fuit ad respondendum Waltero atte Wyche Ricardo le Whyte Willelmo Chichele et Henrico Richard hominibus eiusdem Abbatis de Manerio de Okeburne quod est de antiquo

¹⁻² ioynant le mise, *G.* ³⁻⁴ homme de fraunk estat, *G.* ⁵⁻⁶ vers
lautre, *G.* ⁷ en pruee de, *G.* ⁸⁻⁹ *G.* omits. ¹⁰ nostre, *G.*
¹¹⁻¹² *G.* omits. ¹³⁻¹⁴ From *G.* *R.* has par. ¹⁵ son, *G.* ¹⁶ Added
from *G.* ¹⁸ This *ne* seems to have slipped in by mistake. ¹⁷⁻¹⁹ par cesti
bref eynz seulement reboter daccion etc., *G.*

inquest you dropped the exception of villeinage and pleaded against us as against free men.

Herle. If you had brought your writ of trespass or other writ against the Abbot and he had put forward an exception of villeinage against you, and you, to prove your free estate, had put forward a quitclaim or other deed, and the Abbot had denied it, and if thereupon a jury had come and the inquest had passed against you, you would not thereby be enfranchised, but the finding of the jury would go to the affirming of the former exception. So here.

Friskenev ad idem. If the Abbot wanted to rebut them from their action by means of an exception of villeinage, and they alleged against it that he was seised of their homage, and he said that he was not, and thereupon a jury came and it was found that the Abbot was not so seised, they would be rebutted and would gain no advantage from all that. So here.

ROUBERY J. It was not found by the inquest you allege that they were villeins, and so the finding of that inquest doth not help you to rebut them.

Herle. We do not want to prove that they are our villeins, but only to rebut them [from their action]; and at another time when the Abbot alleged this exception against them they had nothing to say in their own favour except that they were men of the ancient demesne of Oakbourne Regis; and it was then found that they were not, and so they were then rebutted; and for that same reason they still remain not answerable.

BRABAZON C. J. (K.B.). They tell you that you have pleaded with them as with men of free estate without pressing your former exception; and in joining your inquest you might have said that they were not men of Oakbourne Regis, but your villeins of Oakbourne Miles; but you joined your issue without making mention of villeinage.¹

Passeley. We said at the beginning that they ought not to be answered etc., and they, to make themselves answerable, said that they were of the ancient demesne; but because it was found by Domesday that there were two Oakbournes, and the Court can² be certified of this, we ask judgment.

Note from the Record.

Coram Rege Rolls, Hil., 5 Edw. II. (No. 207), r. 82, Wiltshire.

The same Abbot of Bec-Herlowyn was summoned to answer Walter Attewych, Richard the Whyte, William Chichele and Harry Richard, men of the same Abbot of his manor of Oakbourne, which is of the ancient demesne

¹ The text seems corrupt, but the translation given above probably carries the sense of what the Chief Justice said.

² See the text.

Note from the Record—*continued.*

dominico corone Regis Anglie vt dicitur de placito quare exigit a prefatis hominibus alias consuetudines et alia seruicia quam facere debent et antecessores sui tenentes de eodem manerio facere consueuerunt temporibus quibus manerium illud fuit in manibus progenitorum Regis nunc quondam Regum Anglie ad graue dampnum ipsorum hominum vt dicunt. Et vnde queruntur quod cum ipsi homines et eorum antecessores tempore Regum Anglie progenitorum domini Regis nunc videlicet tempore Regis Willelmi Conquestoris solebant tenere terras suas per quedam certa seruicia videlicet quamlibet virgatam terre pro quinque solidis per annum ad festum Sancti Michaelis et post mortem antecessorum suorum solebant duplicare firmam suam et dare pro Wodegaul ad le Hokeday decem denarios et faciendo duos aduentus per annum ad Curiam de Okeburne videlicet semel ad proximam Curiam tentam post festum Sancti Michaelis et ad proximam Curiam tentam post le Hokeday pro omni seruicio Que quidem certa seruicia antecessores sui facere consueuerunt tempore Regis predicti progenitoris etc. et sic continuando de Rege in Rege vsque tempore domini Regis Edwardi patris Regis nunc [et] quod idem Abbas et predecessores sui iniuste induxit ipsos per suas graues districciones ad facienda villana seruicia scilicet operaria in septimana per tres dies a festo Sancti Michaelis vsque ad festum Sancti Petri Ad vincula et Falcare pratum et metere cotidie tempore messionis vnam acram bladi vel dare per diem tres denarios et obolum Cariagia facere pro voluntate sua arare vnam acram terre ad semen yemale et vnam acram ad semen quadragesimale Talliare ipsos alto et basso et Marchetum facere pro filiabus suis maritandis et ad voluntatem suam propositos facere et ad multa alia villana seruicia facienda. Vnde dicunt quod deteriorati sunt et dampnum habent ad valenciam ducentarum Librarum et inde producunt sectam etc.

Et predictus Abbas per attornatum suum venit et dicit quod predicti Walterus et alii ad breue suum responderi non debent quia dicit quod ipsi sunt villani sui et ipse seisitus est de eisdem vt de villanis suis et fuit die impetracionis breuis etc. videlicet¹

Et predicti Walterus et alii dicunt quod predictus Abbas per excepcionem predictam ipsos ab accione sua repellere non potest quia dicunt quod ipsi sunt tenentes de manerio de Okeburne quod est de antiquo dominico corone etc. nec dedici potest quin tenentes eiusdem manerii sint ad certa seruicia et petunt iudicium etc.

Et predictus Abbas dicit quod predicti Walterus et alii alias in Curia domini Regis coram Radulpho de Hengham et sociis suis Iusticiariis de Banco anno etc. tulerunt consimile breue uersus predictum Abbatem ad quod idem Abbas dixit ipsos Walterum et alios ad breue predictum responderi non debere quia dixit ipsos esse villanos suos vt predictum est et petiit iudicium etc.

¹ A blank space is left in the original.

Note from the Record—continued.

of the Crown of the King of England—so it is alleged—of a plea why he doth exact from the aforesaid men other customs and other services than they ought to render and their ancestors that held of the same manor were used to render in the times when that manor was in the hands of the progenitors of the King that now is, aforesaid Kings of England, to the grievous damage of these same men, as they say. And in respect of this they complain that while these same men and their ancestors in the time of Kings of England that were progenitors of the lord King that now is, to wit, in the time of King William the Conqueror, used to hold their lands by certain fixed services, to wit, for every virgate of land they paid five shillings yearly at the Feast of St. Michael, and upon the death of an ancestor they used to double the rent and to give ten pence for Woodgavel at the Hockday, and they made two appearances each year at the Court of Oakbourne, to wit, once each at the Court holden next after the Feast of St. Michael and at the Court holden next after the Hockday, for all services; the which fixed services their ancestors used to render in the time of the aforesaid King, progenitor etc., and they continued to render such from the time of one King to another till the time of the lord King Edward, father of the King that now is; and they complain that the said Abbot and his predecessors did unjustly compel them by their grievous distrainments to render villein services, to wit, three days' work a week from the Feast of St. Michael to the Feast of St. Peter-in-Chains,¹ to mow the meadowland and to reap every day during the time of harvest one acre of corn, or to pay three pence and a half-penny for each day, to furnish carriage at his demand, to plough one acre of land for the winter sowing and one acre for the Lent sowing; and to be tallaged high and low and to pay merchet on the marriage of their daughters, and to be made his reeves when he chose, and that many other villein services he did make them render. Whereby they say that they have been endamaged and have damage to the amount of two hundred pounds; and thereof they do produce suit.

And the aforesaid Abbot doth come by his attorney and he saith that the aforesaid Walter and the others ought not to be answered to their writ, for he saith that they are his villeins and that he is seised of them as of his villeins and was so seised on the day of the purchase of the writ etc. to wit,

And the aforesaid Walter and the others say that the aforesaid Abbot cannot rebut them from their action by the aforesaid exception, for they say that they are tenants of the manor of Oakbourne, which is of the ancient demesne of the Crown etc. nor can he deny that they hold the same manor by fixed services; and they ask judgment etc.

And the aforesaid Abbot doth say that the aforesaid Walter and the others did at another time in the Court of the lord King, before Ralph of Hengham and his companions, Justices of the Bench, in the year etc., bring a similar writ against the aforesaid Abbot to which the same Abbot did say that those Walter and others ought not to be answered to the aforesaid writ, for he said that they were his villeins as is aforesaid, and he asked judgment etc.

¹ August 1.

Note from the Record—continued.

Et predicti Walterus et alii e contrario dixerunt se esse de manerio de Okeburne predicto quod est de antiquo dominico Corone etc. et inde vocauerunt recordum Libri de Domesday quo scrutato compertum fuit in eodem quod due fuerunt ville de Okeburne videlicet Okeburne Regis et Okeburne quod fuit Milonis Crispyn etc. Et super hoc quesitum fuit a prefatis Waltero et aliis de quo Okeburne dixerunt se esse qui dixerunt de Okeburne Regis Et predictus Abbas dixit ipsos esse de Okeburne quod fuit Milonis Crispyn et hoc paratus fuit verificare per patriam etc. Et super hoc per inquisitionem patrie in quam partes predictae se posuerunt compertum fuit coram prefatis Iusticiariis quod predicti Walterus et alii fuerunt de Okeburne quod fuit Milonis Crispyn et non de Okeburne Regis per quod consideratum fuit quod predicti Walterus et alii nichil caperent per breue etc. set essent etc. Et Abbas sine die et petit iudicium si iidem Walterus et alii contra recordum predictum modo dicere possunt se esse de Okeburne Regis quod est de antiquo dominico corone etc.

Et predicti Walterus et alii petunt quod predictus Abbas dicat ad quam excepcionum predictarum se velit tenere vtrum ad excepcionem villenagii vel ad excepcionem recordi etc. qui dicit quod ad excepcionem villenagii simul cum alia excepcione que probat ipsos esse non responsuros etc. Et super hoc iidem Walterus et alii petunt iudicium ex quo idem Abbas coram prefatis Iusticiariis cum eisdem Waltero et aliis placitauit et ad sectam ipsorum Walteri et aliorum posuit se in inquisitionem et pretendebat verificare se ipsos esse de Okeburne quod fuit Milonis Crispyn etc. Et fecit se partem eisdem vt hominibus liberis etc. nullam ad tunc faciens mencionem de aliqua excepcione villenagii si modo possit ipsos per huiusmodi excepcionem ab accione repellere etc.

Et super hoc datus est eis dies a die Pasche in tres septimanas vbicunque etc. Ad quem diem predicti Walterus et alii querentes essoniati fuerunt et habuerunt diem per essonium vsque a die sancte Trinitatis in .xv. dies vbicunque etc. Idem dies datus fuit prefato Abbati prout patet in rotulo de essoniis de termino predicto etc. Ad quem diem partes predictae venerunt et datus est eis dies vsque in Octabis sancti Iohannis Baptiste vbicunque etc. vt de die in diem etc. Ad quem diem partes predictae venerunt Et datus est eis dies a die sancti Michaelis in tres septimanas vbicunque etc.¹

¹ Nothing further is recorded in the matter.

Note from the Record—*continued*.

And the aforesaid Walter and the others did say on the other hand that they are of the manor of Oakbourne aforesaid, which is of the ancient demesne of the Crown etc. and they vouched the record of Domesday Book, wherein search being made it was found in the same that there were two villis of Oakbourne,¹ to wit, Oakbourne Regis and Oakbourne which belonged to Miles Crispin etc. And upon this the aforesaid Walter and the others were asked of which Oakbourne they said they were, and they said that they were of Oakbourne Regis. And the aforesaid Abbot said that they were of the Oakbourne which was held by Miles Crispin, and he was ready to aver this by the country etc. And upon this it was found before the aforesaid Justices by the inquest of the country upon which the aforesaid parties had put themselves that the aforesaid Walter and the others were of the Oakbourne that is held by Miles Crispin and not of Oakbourne Regis. Wherefore it was considered that the aforesaid Walter and the others should take naught by their writ etc. but should be etc. and that the Abbot should go away *sine die*. And he now asketh judgment if the same Walter and the others can now say, against the aforesaid record, that they are of Oakbourne Regis, which is of the ancient demesne of the Crown etc.

And the aforesaid Walter and the others ask that the aforesaid Abbot may say to which of the aforesaid exceptions he doth wish to betake himself, whether to the exception of villeinage, or to the exception of the record etc.; and he saith to the exception of villeinage, together with the other exception that challengeth their right to be answered etc. And upon this the same Walter and the others ask judgment whether, since the same Abbot did plead before the aforesaid Justices with the same Walter and the others, and did at the suit of the same Walter and the others put himself upon the inquest and did offer to aver that they were of the Oakbourne that Miles Crispin held etc. and did make himself party to the same as to free men etc., making up to then no mention of any exception of villeinage, he can now rebut them from their action by an exception of this kind etc.

And thereupon a day is given them three weeks from Easter wherever etc. Upon which day the aforesaid Walter and the other complainants were essoined and had a day by essoin in the quindenies of the Holy Trinity wherever etc. The same day was given to the aforesaid Abbot, as appeareth in the roll of essoins for the aforesaid term etc. upon which day the parties came and a day is given them in the octaves of St. John the Baptist wherever etc. as from day to day etc. upon which day the aforesaid parties came and a day was given them three weeks from Michaelmas wherever etc.

¹ The entries in Domesday referring to the two Oakbournes are to the following effect.

‘The King holdeth Ocheborne. It gelded for thirty hides T.R.E. There is land for thirty-five ploughs. In demesne are eighteen hides and there are four ploughs and six serfs. There twenty-four villeins and fourteen bordars have ten ploughs. There are six acres of meadow, and pasture half a mile in length and four furlongs in breadth, and as much

wood. It is worth twenty-five pounds.’

‘The same Miles holdeth Ocheburne. Earl Harold held it T.R.E. and it gelded for ten hides. There is land for eight ploughs. Six hides of it were in demesne and there are three ploughs and four serfs, and eleven villeins and four bordars with three ploughs. There is a mill returning twenty shillings and eight acres of meadow; pasture half a mile in length and the same in breadth. It was worth and is worth fifteen pounds.’

32. CURTENAY *v.* THE KING.¹

Quare impedit porte par le Roy de mesme la Eglise qe Hugh de Cortenay recouera vers T. de Houowayt et recouera.

Rex portauit quare impedit deuers Thomas de Hutwayt et pendant ceo bref Huwe de Cortenay [porta] au tel bref deuers Thomas de Hutwayt et recouera le presentement par iugement et auoit bref al Ordinarie Et pur ceo qe le Roy mist debat les Ordinaries ne voillent pas par iugement resceyuer le presentement Huwe Par qi sire Huwe porta bylle en comun parlement le Roy et pria qil poyt mustre son dreyt et pus fere ceo qe resoun demande. Par qi il fut maunde en Baunc le Roy et certeinz iustices assignez de ly fere dreyt et sur ceo auoyt bref en baunc le Roy. Et le Roy fit venir le Record et le proces entre ly et Thomas deuant Sire Roger de Brabissoun et se fyt title qe Isabele de force contesse etc. qe tynt de ly en chef et fut seisi de la doueson dil Eglise de B. et morust seisi apres qi mort ceste aduoueson deuynt en la Mayn le Roy pur ceo qe Isabele tynt de ly en chef et laduoueson nent suwy hors de sa mayn issi apent a presenter.

Denom. Nous sumes en mesme le stat qe si nous fussoms en comun baunc.

Brab. Vous auet perdu par iugement la voueson par qi vous estes deseisine hors dont il vous ne put le Roy reen recouerer par qi il pert qe a vous ne deit il ren respoudre de pus qil ne put reen recouerer. Et dautre part pledet sagement qe vous ne seyet troue desturbor et deforcer par qi qil recouere damages vers vous.

Berr. Le Roy put chaunger son title qant il voudra et vous volet demorer en iugement sor cel point etc.

Brab. Autre foye demande il la voueson com Edward et estrange purchasor et ore demande il com le dreyt de sa coroune de sa prerogative.

Malm. Le Roy clama com le dreit Huwe de Cortenay heyr Isabele etc. et nous auoms fet vener le Record etc. et rehersa le iugement sor

¹ Reported by *G.*

32. CURTENAY *v.* THE KING.

Quare impedit brought by the King in respect of the same church which Hugh of Courtenay recovered from Thomas of Hothwayt. The King now recovereth it.

The King brought his *quare impedit* against Thomas of Hothwayt, and while this writ was pending Hugh of Courtenay brought a like writ against Thomas of Hothwayt and recovered the presentation by judgment; and he had a writ to the Ordinary. And because the King had taken action, the Ordinaries were not willing to accept the presentation of Hugh, who had recovered by judgment; and Hugh thereupon brought a bill in the common Parliament of the King, and prayed that he might show his right and then do as reason dictateth. In consequence of this he was sent into the King's Bench, and certain Justices were assigned to do him right, and upon this he had a writ in the King's Bench. And the King made the record and the process between Hugh and Thomas before Sir Roger le Brabazon come [before the Court]; and he based his title upon the fact that Isabel of Forz, Countess¹ etc., who held of him in chief, was seised of the advowson of the church of B. and died seised; and upon her death this advowson came into the King's hand, because Isabel held of him in chief, and the advowson had not been sued out of his hand; and so it belongeth [to him] to present.

Denham. We are in the same state as if we were in Common Bench.

BRABAZON C.J. (K.B.) You have lost the advowson by judgment. Consequently you are out of seisin, and therefore the King can recover naught from you. Wherefore it appeareth that he ought not to answer aught to you, since he can recover naught from you. Moreover, take heed that you plead discreetly, lest you be found to be a disturber and deforcer, in which case he would recover damages against you.

BEREFORD C.J. (C.B.) The King can change his title when he will, and you want to abide judgment on this point² etc.

BRABAZON C.J. (K.B.) Aforetime he claimed the advowson as Edward, and as a strange purchaser, and now he claimeth it of his prerogative, in right of his Crown.

Malberthorpe. The King claimed as in the right of Hugh of Courtenay that was heir of Isabel etc., and we have caused the Record etc. to come—and he repeated the judgment upon which

¹ Isabel of Forz was elder daughter of Reviers, Earl of Devon, and second wife of William of Forz, titular Count of Aumale. She died without sur-

viving issue, 10 November 1293. See *The Complete Peerage* (ed. Hon. Vicary Gibbs), i. 355-6.

² i.e. on the purchase from Isabel.

quel iugement le Recouerer Sire Huwe fut fondu sur Errounz par qi nous nentendoms my qe vous volet aler plus auant eynz ceo qe vous eyet examine cel record qest cause dil autre iugement.

Brab. Qi a le Roy a fere de bref pendant entre autres persones par qi si vous volet ren dire pur Thomas dîtes le qe par tant ne targera my le iugement.

Malm. Nous vous dioms qe a Thomas appent apresenter solom le title qe nous auoms auant mustre.

Hert. Nous vous dioms qe Isabele auoyt la possession par le recouerer vers vostre ancestre solom ce qe troue est par record et morust seisi de ceste auoueson. Et pur ceo qele tynt en chef du Roy ceste aduoueson deuynt en la Mayn le Roy apres sa mort et vncore demurt nent suwy hors de sa mayn et issi apent etc. Et al title Thomas en ceo cas ne ad le Roy mestre a respoudre Car il suffit en ceo cas par resoun de sa prerogative pur title de auerer qe son tenant morust seisi etc. qe ieo pos qe Isoud vst disseisi Thomas du maner a qi aduoueson est appendant et morust seisi le Roy entre par resoun de sa prerogative et nule enqueste passereyt des tenemenz qe le Roy issi tendreit qe vne enqueste en Cas passereit en countre le Roy et lautre par cas en countre le heyr et vous auet le presentement Isabele ceune [*sic*] scilicet qele presenta A. de Bec par qi suffit au Roy de afferme la possession Isoud.

Denom. Le presentement Isabele de A. ne nous deit nure qe ceo fust purpris tant qe nous fumes deinz age en quele cas my meriuoille Car cest a la comune ley et nous auoms statut¹ pur nous.

Hert. Statut ne lye my en countre la prerogative le Roy.

Denom. Si le Roy ne respounde a nostre title si serroms nous par cas saunt recouerer qe put estre qe le [heyr] ne suereyt en ceo cas iames de auer la chose de la main le Roy. *Item* le Roy put trauerser qe Thomas fut de plein age *Et dautre part* le Roy ne put estre de meilleur condicion qe ne serroit Isabele mesmes de qi il prent son title. Mes ceo serroit bon respounse a Isabele qe Thomas fut deinz age par qi il semble etc.

¹ Statute of Westminster II, cap v.

judgment, based on error,¹ the recovery was gotten by Sir Hugh. Wherefore we do not think that you will wish to proceed further before you have examined this record, which is the cause of the other judgment.

BRABAZON C.J. (K.B.) What hath the King to do with a writ pending between other persons? So, if you want to say anything on behalf of Thomas, say it, for judgment will not be delayed for such reasons.

Malberthorpe. We tell you that it belongeth to Thomas to present, in accordance with the title we have set forth.

Hartlepool. We tell you that Isabel had the possession by the recovery gotten against your ancestor, according to what is proved by the record, and she died seised of this advowson. And, because she held of the King in chief, this advowson came into the King's hand upon her death, and it still remaineth there, not having been sued out of his hand, and so it belongeth etc. And in these circumstances the King hath no need to reply to the title set up by Thomas; for, in the circumstances, by reason of his prerogative, it is sufficient to establish his title if he aver that his tenant died seised etc. For I put the case that Isabel had disseised Thomas of the manor to which the advowson is appendant and that she died seised; the King would enter by reason of his prerogative and no inquest would pass of tenements which the King should so hold, for one inquest might perchance pass against the King, and another, perchance, against the heir. And you have here the presentation of Isabel, to wit, that she presented A. of Bec, and that is sufficient to enable the King to affirm Isoud's possession.

Denham. The presentation by Isabel of A. ought not to prejudice us, for it was made while we were within age, and there is nothing surprising about it in those circumstances, for it was done under the common law, while here we have the statute in our favour.

Hartlepool. Statute does not affect the King's prerogative.

Denham. If the King make no answer to our title, it may be that we shall have no way by which we can recover, for it is possible in these circumstances that the heir will never sue to have the advowson released from the King's hand. Further, the King can traverse [and say] that Thomas was of full age, and yet further, the King cannot be in a better position than Isabel herself, from whom he taketh his title, was in. But it would be a good answer to Isabel to say that Thomas was within age; and so it appeareth etc.

¹ Isabel had recovered from Gilbert, father of Thomas; but at the time of the judgment Gilbert was dead. The judgment was, therefore, founded upon

error, i.e. upon the supposition that Gilbert was alive and that recovery could be had from him.

Brab. Vous auet conu qe Isabele presenta A. et qele morust seisi de cele auoueson et sa possession auere par Record par vne respounse etc. issi deuynt ceste auoueson en la main le Roy pur ceo qele tynt de ly en chef par qi agarde ceste court qe [le] Roy eyt bref as Ordinares *non obstante reclamacione Thome*. Et pur ceo qe Huwe nad pas suwy cet auoueson hors de la main le Roy com heyr Isabele par qi ele demurt nent suwy si agarde ceste court qe le Roy eyt bref al Euesqe *non obstante reclamacione Hugonis*.

Et Sire Huwe suwe le *diem clausit extremum* etc.¹

Note from the Record.

Coram Rege Rolls, Hil., 5 Edw. II. (No. 207), r. 44.

Hugo de Curteney porrexit Domino Regi quandam petitionem in hec verba. A nostre seignur le Roi Prie Hughe de Curtenay qe cum play feust meu en la Court nostre dit seignur le Roi deuant ces Justices de Baunk entre le dit Hughe pleignaunt de vne part et Thomas de Hothwayt destourbaunt de autrepert de la voeson del eglise de Brigham ou les dites parties vnt taunt pleyde deuaunt meismes les Justices par qei Jugement se fist qe le dit Hughe recouerast soun presentement de meismes cel eglise et qil eust bref al ordine de lu qil receiue couenable persone a meismes cel eglise al presentement le dit Hughe Nient countre esteaunt le cleyrn le dit Thomas. Et sour ceo Nostre dit seignur le Roi ad mis debat en la voeson de meismes la eglise par qei le presentement le dit Hughe ne put estre receu taunk le droit soit trie entre le dit nostre seignur le Roi et lui. Par qei le dit Hughe prie a nostre seignur le Roi qe il luy pleise assigner de ces Justices tieus cum il luy pleira a oyr et trier solom ley et reisoun le droit de meismes cel auosoun entre le dit nostre seignur le Roi et le auaunt dit Hughe. Ad quam petitionem Dominus Rex respondit Dominus Rex vult quod dominus Rogerus Brabanzon Henricus Lescrop et Henricus Spigornel audiant et discutiant ius aduocacionis ecclesie de Brigham inter ipsum dominum Regem et dominum Hugonem de Courtenay prout petitur per istam petitionem.

Pretextu cuius petitionis et eciam responsi Iohannes de Beuerle qui sequitur pro domino Rege et eciam predictus Hugo de Courtenay coram prefatis Iusticiariis apud Westmonasterium videlicet die Iouis proxima post festum Sancti Michaelis anno regni Regis nunc quinto venerunt et datus est eis dies a die Sancti Hillarii in .xv. dies vbicunque etc. pro eo quod iidem Iusticiarii in negocio predicto rite etc. procedere non potuerunt sine recordo et processu inde habitis coram Iusticiariis de Banco etc.

¹ This was a writ to the King's Escheator directing him to deliver the escheated advowson. See Fitzherbert's *Natura Brevium*, p. 252 and following pages.

BRABAZON C.J. (K.B.) You have admitted in your answer etc. that Isabel presented A. and that she died seised of this advowson and her possession has been averred by the record; and so, because she held of the King in chief, this advowson came into the King's hand. Wherefore this Court giveth judgment that the King have a writ to the Ordinaries, the claim by Thomas notwithstanding. And because Hugh hath not, as heir of Isabel, sued this advowson out of the King's hand, and it therefore remaineth unsued there, this Court giveth judgment that the King have a writ to the Bishop, the claim by Hugh notwithstanding.

And Sir Hugh sued out his writ of *diem clausit extremum* etc.¹

Note from the Record.

Coram Rege Rolls, Hil., 5 Edw. II. (No. 207), r. 44.

Hugh of Courtenay presented a petition to the lord King in these words. To our lord the King prayeth Hugh of Courtenay that a plea was entered in the Court of our said lord the King before his Justices of Bench between the said Hugh, plaintiff, of the one part, and Thomas of Hothwayt, deforcient, of the other part, of the advowson of the church of Brigham, in which the parties have so far pleaded before the same Justices that judgment hath been given that the said Hugh should recover his presentation of the same church, and should have a writ to the Ordinary of the place charging him to admit a suitable person to the same church upon the presentation of the said Hugh, the claim of the said Thomas notwithstanding. And upon this our lord the King hath claimed the advowson of the same church, and therefore the presentee of the said Hugh cannot be received until that the question of right between our said lord the King and him hath been tried. Wherefore the said Hugh prayeth our lord the King that it may please him to assign such of his Justices as it shall please him to hear and try according to law and reason the right in this same advowson between our said lord the King and the aforesaid Hugh. To which petition the lord King answered that the lord King willeth that the lord Roger Brabanzon, Harry the Scrope and Harry Spigurnel hear and determine the right in the advowson of the church of Brigham between the said lord King and the lord Hugh of Courtenay, as is prayed in this petition.

In consequence of which petition and eke the answer thereto, John of Beverley, that prosecuteth for the lord King, and eke the aforesaid Hugh of Courtenay came before the Justices aforesaid at Westminster, to wit, on the Thursday next after the Feast of St. Michael in the fifth year of the King that now is, and a day is given them in the quindenes of St. Hilary wheresoever etc., because the same Justices were not able to proceed regularly in the aforesaid matter without the record and process thereof being brought before the Justices of the Bench etc.

¹ This was a writ directed to the King's Escheator calling upon him to surrender an escheat in the King's hand.

Note from the Record—continued.

Postea Dominus Rex mandauit breue suum Willelmo de Bereford in hec verba. Supplicauit nobis dilectus et fidelis noster Hugo de Curteney quod supra iure quod idem Hugo clamat habere in aduocacione ecclesie de Brigham de qua placitum pendet coram vobis in Banco predicto inter nos et Thomam de Hothwayt volumus eidem Hugoni iusticiam exhibere. Nos igitur petitioni ipsius Hugonis in hac parte fauorabiliter annuentes concessimus quod negocium illud coram nobis a die sancti Hillarii proximo futuri in .xv. dies vbicunque tunc fuerimus in Anglia tam supra iure ipsius Hugonis quam supra iure nostro quod nobis competit in hac parte audiatur et quam citius secundum legem et consuetudinem regni nostri fieri poterit terminetur. Et quia expediens est et necesse quod loquela predicta que inter nos et predictum Thomam pendet coram vobis in Banco predicto de aduocacione predicta vt predictum est simul cum predicto negocio nos et dictum Hugonem inde tangente terminetur vobis mandamus quod totum processum eiusdem loqule inde coram vobis habitum nobis sub sigillo vestro prefate Willelme vna cum omnibus adminiculis loquelam illam tangentibus mittatis et hoc breue. Ita quod ea habeamus in quindena predicta prefato Thome eundem diem prefigentes quod tunc sit ibi ius suum in hac parte prosecuturus facturisque vltorius et recepturus quod curia nostra considerauerit in premissis. Teste me ipso apud Westmonasterium .viij. die Decembris anno regni nostro quinto.

Mandauit eciam Rogero le Brabanzon breue suum in hec verba. Quia certis de causis volumus quod peticio dilecti et fidelis nostri Hugonis de Curtenay nobis nuper super iure quod sibi competere asserit in aduocacione ecclesie de Brigham nobis exhibita et vobis postmodum liberata ac eciam totum negocium vobis et dilectis et fidelibus nostris Henrico Spigornel et Henrico le Scrop inde per nos commissum coram nobis audiantur ac eciam quod idem negocium et placitum quod est coram dilectis et fidelibus nostris Willelmo de Bereford et sociis suis Iusticiariis nostris de Banco inter nos et Thomam de Hothwayt per breue nostrum de aduocacione predicta simul coram nobis terminentur per quod prefato Willelmo mandauimus quod processum placiti predicti coram ipso et sociis suis predictis inde habitum mittat coram nobis sub sigillo suo in quindena sancti Hillarii proximo futuri vobis mandamus quod petitionem predictam cum omnibus coram vobis et prefatis Henrico et Henrico inde deductis habeatis coram nobis in quindena predicta et hoc breue vt tunc fiat super premissis quod de iure et secundum legem et consuetudinem regni nostri fuerit faciendum Teste me ipso apud Westmonasterium .viij. die Decembris anno regni nostri quinto.

Pretextu primi breuis predicti prefato Willelmo de Bereforde directi Idem Willelmus prefixit prefato Thome diem hic coram Rege ad prefatam quindenam sancti Hillarii prout breue exigit et misit recordum et processum in hec verba.

Note from the Record—*continued.*

Afterwards the lord King sent his writ to William of Bereford in the words following. Our beloved and faithful Hugh of Courtenay hath made supplication to Us that in respect of the right which the same Hugh claimeth to have in the advowson of the church of Brigham, in respect of which a plea is pending before you in the Bench aforesaid between Ourselves and Thomas of Hothwayt, We will do justice to the same Hugh. We, therefore, being favourably inclined in these circumstances to the petition of the said Hugh, have granted, as it is herein competent for Us to do, that this matter, so far as both the right of the said Hugh and Our own right are concerned, shall be heard before us on the quindenes of St. Hilary next following, wherever in England We shall then be, and be determined, as speedily as it may be, in accordance with the law and custom of Our realm. And for that it is expedient and necessary that the action which is pending before you in the Bench aforesaid between Ourselves and the aforesaid Thomas in respect of the aforesaid advowson, as is aforesaid, together with the matter aforesaid that concerneth Ourselves and the said Hugh be determined, We command you, William aforesaid, that you send to Us under your seal the whole process had before you in that same suit, together with all auxiliary matters touching that suit together with this writ, so that We have them on the aforesaid quindene; giving to the aforesaid Thomas the same day that he then be there to prosecute his right in this matter, and afterwards to do and receive that which Our Court shall adjudge in the premises. Witness Myself, at Westminster on the eighth day of December in the fifth year of Our reign.

And to Roger the Brabazon he sent his writ in the words following Because for certain reasons We will that the petition of Our beloved and faithful Hugh of Courtenay lately laid before Us touching the right which he asserteth doth belong to him in the advowson of the church of Brigham, and afterwards delivered to you, and also the whole of the matters in relation thereto that were committed to you and to Our beloved and faithful Harry Spigurnel and Harry the Scrope, be heard before Ourselves, and eke that the same matter and plea that is now by Our writ before Our beloved and faithful William of Bereford and his companions, Justices of Our Bench, between Ourselves and Thomas of Hothwayt, touching the aforesaid advowson be at the same time determined before Us, We have, in pursuance of such purpose, commanded the aforesaid William to send before Ourselves under his seal on the quindene of St. Hilary next following the process of the aforesaid plea had before him and his aforesaid companions in respect thereof, so that you may have the aforesaid petition, together with all things relating thereto, brought before you and the aforesaid Harry and Harry on the quindene aforesaid, together with this writ, that there may then be done in respect of the premises what ought to be done of right and according to the law and custom of Our realm. Witness Myself, at Westminster on the eighth day of December in the fifth year of Our reign.

By reason of the first writ aforesaid directed to the aforesaid William of Bereford, the same William did give to the aforesaid Thomas a day here *coram Rege* on the aforesaid quindene of St. Hilary as the writ required, and he sent the record and the process in the words following.

Note from the Record—continued.

PLACITA APUD WESTMONASTERIUM CORAM WILLELMO DE BEREฟอร์ด ET SOCIIS SUIS IUSTICIARIIS DOMINI REGIS DE BANCO A DIE SANCTI IOHANNIS BAPTISTE IN XV. DIES ANNO REGNI REGIS EDWARDI FILII REGIS EDWARDI QUINTO INCIPIENTE.

Cumberland. Thomas de Hothewayt summonitus fuit ad respondendum domino Regi de placito quod permittat ipsum dominum Regem presentare idoneam personam ad ecclesiam de Brigham que vacat et ad ipsius domini Regis spectat donacionem etc. Et vnde Iohannes de Beuerlaco qui sequitur pro domino Rege dicit quod quedam Isabella quondam Comitissa Albe Marlie et Deuonie aliquando fuit seisita de aduocacione ecclesie predicte que ad eandem ecclesiam presentauit quemdam Magistrum Rogerum de Seytone clericum suum qui ad presentacionem suam fuit admissus et institutus tempore pacis tempore Henrici Regis Aui domini Regis nunc etc. Et vacante eadem ecclesia per mortem predicti magistri Rogeri eadem Comitissa ad eandem ecclesiam presentauit quemdam Ricardum filium Iohannis clericum suum qui ad presentacionem suam fuit admissus et institutus etc. tempore pacis tempore Regis Edwardi patris domini Regis nunc etc. Et eadem ecclesia vacante per resignacionem ipsius Ricardi filii Iohannis etc. predicta Comitissa ad eandem ecclesiam presentauit quemdam Antonium de Bek clericum suum etc. qui ad presentacionem suam fuit admissus et institutus etc. tempore pacis tempore eiusdem Regis Edwardi patris etc. Et dicit quod postmodo in Curia predicti Regis Edwardi patris etc. a die sancti Iohannis Baptiste in .xv. dies anno regni sui nono leuauit quidam finis inter Robertum de Mauentwyth et Walterum de Twynham et Isabellam vxorem eius querentes et predictam Comitissam deforcientem de aduocacione ecclesie predicte vnde placitum conuencionis etc. scilicet quod predicta Comitissa concessit pro se et heredibus suis quod quam cito predicta ecclesia vacasset predictus Robertus presentaret clericum suum ad eandem si idem Robertus tunc superstes fuisset. Et si idem Robertus tunc superstes non fuisset tunc predicti Walterus et Isabella vel heredes ipsius Isabelle vxoris predicti Walteri absque contradiccione seu impedimento ipsius Comitisse vel heredum suorum presentarent etc. Et pro hac etc. predicti Robertus et Walterus et Isabella vxor eius concesserunt pro se et heredibus ipsius Isabelle quod cum contigisset predictam ecclesiam vacare post mortem vel cessionem clerici qui ad presentacionem ipsius Roberti vel ipsorum Walteri et Isabelle vxoris eius siue heredum ipsius Isabelle ad eandem ecclesiam fuerat admissus et institutus etc. predicta Comitissa vel heredes sui presentarent clericum suum ad eandem ecclesiam absque contradiccione vel impedimento ipsorum Roberti Walteri et Isabelle vel heredum ipsius Isabelle. Ita quod cum contigisset predictam ecclesiam vacare per mortem vel cessionem clerici qui ad presentacionem ipsius Comitisse vel heredum suorum ad eandem ecclesiam fuisset admissus et institutus etc. predictus Robertus presentaret clericum suum etc. si idem Robertus tunc superstes fuisset. Et si non etc. tunc predicti Walterus et Isabella vel heredes ipsius

Note from the Record—continued.

PLEAS AT WESTMINSTER BEFORE WILLIAM OF BEREฟอร์ด AND HIS COMPANIONS, JUSTICES OF THE BENCH OF THE LORD KING IN THE QUINDENES OF ST. JOHN THE BAPTIST IN THE BEGINNING OF THE FIFTH YEAR OF THE REIGN OF KING EDWARD THE SON OF KING EDWARD.

Cumberland. Thomas of Hothwayt was summoned to answer the lord King of a plea that he permit the said lord King to present a fit person to the Church of Brigham which is vacant and is regardant to the donation of the lord King etc. And in respect of this John of Beverley, that sueth for the lord King, saith that a certain Isabel, aforetime Countess of Aumale and Devon, was at one time seised of the advowson of the aforesaid church; and she presented a certain Master Roger of Seyton, her clerk, to the same church, who, upon her presentation, was admitted and instituted in time of peace, in time of King Harry, grandfather of the lord King that now is etc. And, upon the same church becoming vacant by the death of the aforesaid Master Roger, the same Countess presented to the same church a certain Richard, son of John, her clerk, who upon her presentation was admitted and instituted etc. in time of peace, in the time of King Edward, father of the lord King that now is etc. And, the same church becoming vacant by the resignation of the said Richard, son of John etc., the aforesaid Countess presented to the same church a certain Anthony of Bec, her clerk etc., who upon her presentation was admitted and instituted etc., in time of peace, in the time of the same King Edward, father etc. And he saith that afterwards in the Court of the aforesaid King Edward, father etc., in the quindenes of St. John the Baptist in the ninth year of his reign, a certain fine was levied between Robert of Mauentwyth and Walter of Twynham and Isabel his wife, complainants, and the aforesaid Countess, deforcient, of the advowson of the church aforesaid, of which a plea of agreement etc., to wit, that the aforesaid Countess did grant for herself and her heirs that as soon as the aforesaid church should be vacant the aforesaid Robert should present his clerk to the same, if the same Robert should then be alive. And, if the same Robert should not be then alive, then the aforesaid Walter and Isabel or the heirs of the same Isabel, wife of the aforesaid Walter, should present, without any opposition or hindrance on the part of the said Countess or of her heirs. And, in consideration of this, the aforesaid Robert and Walter and Isabel his wife did grant for themselves and for the heirs of the same Isabel that when it happened that the aforesaid church should become vacant by the death or cession of the clerk who had been admitted and instituted etc., to the same church, upon the presentation of the same Robert or the same Walter and Isabel, his wife, or the heirs of the same Isabel, the aforesaid Countess, or her heirs, should present her or their clerk to the same church without opposition or hindrance on the part of the same Robert, Walter and Isabel, or of the heirs of the same Isabel, provided that when it happened that the aforesaid church became vacant by the death or cession of the clerk who upon the presentation of the said Countess or her heirs had been admitted and instituted etc. to the aforesaid church, the aforesaid Robert should present his clerk etc., if the same Robert were then alive; and, if not etc., then the aforesaid Walter and

Note from the Record—*continued.*

Isabelle presentarent clericum suum ad eandem ecclesiam. Et sic predictus Robertus tota vita sua etc. Et post mortem eiusdem Roberti Walterus et Isabella vxor eius et heredes ipsius Isabelle etc. et predicta Comitissa et heredes sui alternatim et successiue presentarunt clericos suos ad eandem ecclesiam etc. Et dicit quod postea vacante eadem ecclesia per cessionem predicti Antonii de Bek qui fuit electus in Episcopatum etc. predictus Robertus de Mauenywyth per formam finis predicti presentauit ad predictam ecclesiam quemdam Robertum de Musegraue clericum suum qui ad presentacionem suam fuit admissus et institutus etc. tempore pacis tempore eiusdem Edwardi Regis patris etc. per cuius mortem predicta ecclesia modo vacat etc. Et dicit quod predicta Comitissa dedit prefato Edwardo Regi patri etc. viginti denarios redditus in predicta villa de Brigham et aduocacionem ecclesie predictae simul cum aliis tenementis etc. Habendis et tenendis ipsi Domino Regi et heredibus suis imperpetuum Et de ipso Edwardo Rege descendit Ius presentandi etc. isti domino Edwardo Regi nunc etc. Et ita ad ipsum dominum Regem nunc pertinet ad predictam ecclesiam presentare etc. Et hoc paratus est verificare pro domino Rege etc.

Et Thomas venit et defendit vim et iniuriam quando etc. Et dicit quod ad ipsum Thomam et non ad dominum Regem pertinet ad predictam ecclesiam presentare etc. Dicit enim quod manerium de Brigham cum pertinenciis ad quod aduocacio predictae ecclesie pertinet aliquando fuit in seisinam cuiusdam Waldeni de Brigham qui ad eandem ecclesiam presentauit quemdam Thomam de Brigham clericum suum qui ad presentacionem suam fuit admissus et institutus etc. tempore pacis tempore Henrici Regis predicti Et de ipso Waldeno descendit ius presentandi etc. ratione manerii predicti cuidam Iohanni vt filio et heredi. Et de ipso Iohanne descendit Ius presentandi etc. quibusdam Alicie et Iohanne vt filiabus et heredibus etc. que quidem Alicia desponsata fuit predicto Roberto de Mauenywythe et predicta Iohanna cuidam Thome de Hothwayt Auo ipsius Thome [qui] nunc etc. Inter quos quidem Robertum et Aliciam Thomam et Iohannam predictum manerium partitum fuit tanquam inter participes et heredes etc. et inter quos concordatum fuit quod ad predictam ecclesiam in posterum vicissim presentarent ratione turni etc. Et dicit quod post mortem ipsius Alicie sororis antenate etc. predictus Robertus de Mauenywythe qui medietatem predicti manerii tenuit per legem Anglie presentauit ad predictam ecclesiam ratione primi turni etc. predictum Robertum de Musegraue etc. qui ad presentacionem suam fuit admissus etc. et per cuius mortem predicta ecclesia modo vacat vt predictum est. Et de ipsa Iohanna sorore postnata etc. descendit Ius alterius medietatis predicti manerii etc. cuidam Gilberto vt filio et heredi etc. Et de ipso Gilberto isti Thome de Hothwayt qui nunc etc. vt filio et heredi. Et ita dicit quod ad ipsum Thomam de Hothwayt nunc pertinet ad predictam ecclesiam presentare etc. ratione secundi turni etc. et non ad dominum Regem etc. Et quo ad statum quem Dominus Rex clamat ratione presenta-

Note from the Record—*continued*.

Isabel, or the heirs of the same Isabel should present their clerk to the same church. And accordingly the aforesaid Robert during the whole of his life etc., and after the death of the same Robert, Walter and Isabel his wife and the heirs of the said Isabel etc., and the aforesaid Countess and her heirs presented their clerks alternately and successively to the same church etc. And he saith that the same church afterwards becoming vacant by the cession of the aforesaid Anthony of Bec, who was elected into the Bishopric etc., the aforesaid Robert of Maumentwyth did by the form of the said fine present a certain Robert of Musgrave, his clerk, to the aforesaid church, who, upon his presentation, was admitted and instituted etc. in time of peace, in the time of the same King Edward, father etc., through whose death the aforesaid church is now vacant etc. And he saith that the aforesaid Countess gave to the aforesaid King Edward, father etc., twenty pence of rent in the aforesaid vill of Brigham and the advowson of the aforesaid church, together with other tenements etc. To have and to hold to the same lord King and his heirs for ever. And the right of the presentation etc. descended from this said King Edward to this lord Edward the King that now is etc. And so it now belongeth to the said lord King to present to the aforesaid church etc. And this he is ready to aver on behalf of the lord King etc.

And Thomas cometh and denieth force and wrong etc. And he saith that to himself, Thomas, and not to the lord King, it doth belong to present to the aforesaid church etc. For he saith that the Manor of Brigham, with the appurtenances, to which the advowson of the aforesaid church belongeth was at one time in the seisin of a certain Walden of Brigham, who presented to the same church a certain Thomas of Brigham, his clerk, who, upon his presentation, was admitted and instituted etc. in time of peace, in the time of King Henry aforesaid. And from that Walden the right of presenting descended etc., in right of the aforesaid manor, to a certain John, as son and heir. And from this John the right of presenting etc. descended to a certain Alice and Joan, as daughters and heirs etc., the which Alice was married to the aforesaid Robert of Maumentwyth, and the aforesaid Joan to a certain Thomas of Hothwayt, grandfather of the Thomas who now etc. And amongst these Robert and Alice, Thomas and Joan, the aforesaid manor was parcelled as amongst parceners and heirs etc. ; and it was agreed amongst them in respect of the aforesaid church that they should in the future present to it alternately in turn etc. And he saith that after the death of the said Alice, elder sister etc., the aforesaid Robert Maumentwyth, who held a moiety of the aforesaid manor by the law of England, presented to the aforesaid church in right of his first turn etc. the aforesaid Robert of Musgrave etc., who, upon his presentation, was admitted etc., and by whose death the aforesaid church is now vacant, as is aforesaid. And from the said Joan, younger sister etc., the right of the other moiety of the aforesaid manor etc. descended to a certain Gilbert, as son and heir etc. ; and from the same Gilbert to this Thomas of Hothwayt who now etc. as son and heir. And so he saith that it now belongeth to this same Thomas of Hothwayt to present to the aforesaid church etc. in right of the second turn, and not to the lord King etc. And as to the estate which the lord King claimeth by reason of the presentations of the said

Note from the Record—*continued.*

cionum ipsius Comitisse etc. vt predictum est dicit quod presentaciones ille ei preiudicare non debent etc. Quia quo ad presentacionem eiusdem [Comitisse] factam ad predictam ecclesiam de predicto Antonio etc. dicit quod idem Thomas de Hothewayt nunc tunc temporis fuit infra etatem etc. et in custodia ipsius Comitisse etc. Et eciam tempore quo eadem Comitissa presentauit predictum Ricardum filium Iohannis etc. predictus Thomas de Hothwayt Auus ipsius Thome nunc tenuit predictam medietatem predicti manerii per legem Anglie de hereditate Gilberti filii et heredis ipsius Iohanne infra etate existentem [*sic*] etc. Dicit eciam quo ad presentacionem ipsius Comitisse factam ad predictam ecclesiam de predicto Magistro Rogero de Seytone etc. quod idem Magister Rogerus non fuit ad presentacionem ipsius Comitisse ad predictam ecclesiam admissus et institutus etc. Et de hoc ponit se super patriam etc. Postea tam de assensu predicti Iohannis qui sequitur pro domino Rege etc. quam predicti Thome datus eis dies hic in Octabis sancti Michaelis in eodem statu quo nunc etc. Ad quem diem venit predictus Iohannes qui sequitur pro domino Rege Et predictus Thomas similiter. Et idem Iohannes qui sequitur etc. dicit quod predictus Thomas Ius presentandi ad predictam ecclesiam clamare non potest. Dicit enim quod predictus Gilbertus pater predicti Thome cuius heres ipse est alias in Curia Regis Edwardi patris domini Regis nunc coram Magistro Rogero de Seytone et sociis suis Iusticiariis eiusdem Regis hic termino Trinitatis Anno regni eiusdem Regis Edwardi patris quinto tulit consimile breue Quare impedit versus predictam Comitissam de aduocacione ecclesie predicte super quo breui predicta Comitissa coram prefatis Iusticiariis recuperauit presentacionem suam ad predictam ecclesiam per iudicium Curie. Et de hoc ponit se super recordum rotulorum etc. Et ex quo predictus Thomas melioris condicionis clamandi presentacionem suam ad predictam ecclesiam esse non potest quam predictus Gilbertus pater etc. si ipse superstes fuisset petit iudicium etc. et breue Episcopo pro Domino Rege etc.

Et Thomas dicit quod a die sancti Iohannis Baptiste in .xv. dies proximo preteriti quando placitauit cum Domino Regi allegauit quod non intendebat quod dominus Rex voluit seu debuit ad huiusmodi narrationem suam responderi. Dixit enim quod cum Dominus Rex sumat titulum Iuris presentandi etc. de seisina predicte Comitisse et per feoffamentum eiusdem factum predicto Edwardo Regi patri etc. de aduocacione predicta tanquam de quodam grosso etc. de quo perquisito Dominus Rex nunc clamando per descensum etc. nullum factum speciale per cartam seu finem etc. ostendit nec docere potest quod idem Dominus Rex pater etc. seu dominus Rex nunc vnequam presentarunt ad predictam ecclesiam per quod Ius aduocacionis predicte vestiri potuit in persona ipsius Regis Edwardi patris etc. seu domini Regis nunc super quo tunc expresse petiit iudicium et ad huc sicut prius petit iudicium si Dominus Rex nunc clamans presentacionem etc. loco extranei perquisitoris responderi velit in hac parte contra legem communem etc.

Note from the Record—*continued.*

Countess etc., as is aforesaid, he saith that those presentations ought not to prejudice him ; for, in respect of the presentation made by the same Countess of the aforesaid Anthony etc. to the aforesaid church, he saith that the present Thomas of Hothwayt was then within age etc. and was in the wardship of the said Countess ; and, further, at the time when the same Countess presented the aforesaid Richard, son of John etc., the aforesaid Thomas of Hothwayt, grandfather of the present Thomas, held the aforesaid moiety of the aforesaid manor by the law of England of the inheritance of Gilbert, son and heir of the said John, then being within age etc. In respect of the presentation made by the said Countess to the aforesaid church of the aforesaid Master Roger of Seaton etc. he saith further that the same Master Roger was not admitted and instituted to the aforesaid church upon the presentation of the said Countess etc. And of this he doth put himself upon the country etc. Afterwards as well by the assent of the aforesaid John that sueth for the lord King etc. as by that of the aforesaid Thomas, a day is given them here in the octaves of St. Michael in the same condition in which they now etc. Upon which day cometh the aforesaid John that prosecuteth for the lord King, and likewise the aforesaid Thomas. And the same John that prosecuteth etc. saith that the aforesaid Thomas cannot claim the right of presenting to the aforesaid church. For he saith that the aforesaid Gilbert, father of the aforesaid Thomas, whose heir Thomas is, did at another time, here in the Court of King Edward, father of the lord King that now is, before Master Roger of Seyton and his companions, Justices of the same King, in the term of the Trinity in the fifth year of the reign of the same King Edward, father etc., bring a like writ of *quare impedit* against the aforesaid Countess in respect of the advowson of the aforesaid church ; under which writ the aforesaid Countess did before the aforesaid Justices recover her presentation to the aforesaid church by judgment of the Court. And of this he doth put himself on the record of the rolls etc. ; and because the aforesaid Thomas cannot be in a better position to claim the presentation to the aforesaid church than the aforesaid Gilbert his father would be, if he were alive, he asketh judgment etc., and a writ to the Bishop on behalf of the lord King.

And Thomas saith that on the quindenies of St. John the Baptist last past, when he pleaded with the lord King, he stated that he did not think that the King would wish or ought to have answer to his count of this kind. For he said that since the lord King baseth his title to his right to present etc. on the seisin of the aforesaid Countess and on the feoffment made by the same [Countess] of the aforesaid advowson, as of a certain gross etc., to the aforesaid King Edward, father etc., of which purchase the lord King, who now claimeth by descent etc., sheweth no special deed by charter or fine etc., nor can show that the same lord king, father etc., nor the lord King that now is, ever presented to the aforesaid church, so that the right in the aforesaid advowson could vest in the person of the said King Edward, father etc., or of the lord King that now is, he thereon specifically asked judgment, and now asketh judgment as before, whether the lord King who is now claiming the presentation etc. as a strange purchaser desireth to be answered in this matter against the common law etc.

Note from the Record—continued.

Et Iohannes qui sequitur etc. dicit quod predictus Thomas per huiusmodi excepcionem ipsum Dominum Regem a presentacione sua prorogare non debet etc. Dicit enim quod predictus Thomas alias respondendo ad presentaciones predictae Comitisse cuius statum idem Dominus Rex habet in aduocacione predicta nitebatur per responsionem suam accionem domini Regis adnullare prout patet in irrotulamento predicti placiti petit iudicium si ad aliquam excepcionem de nouo proponendam in recordo predicti placiti superius placitati non contentam modo possit aut debeat peruenire etc.

Et Thomas dicit quod ipse paratus est verificare per recordum Iusticiariorum hic coram quibus alias placitauit cum Domino Rege quod ipse proponebat eandem excepcionem quam modo allegat calumpniando narrationem Domini Regis in forma predicta Et licet dictum fuisset eidem Thome per Iusticiarios quod doceret qualiter ad ipsum Thomam spectat presentacio etc. pro breui habendo Diocesano etc. prout natura huiusmodi brevis requiritur et ipse pro hoc de Iure suo plene docuisset vt predictum est respondendo vltius ad presentaciones predictae Comitisse prout Curia ipsum ad tunc compellebat nuncquam tamen recessit ab excepcione sua predicta. Immo semper salua sibi excepcione predicta et beneficio eiusdem excepcionis respondebat vltius etc. modo supradicto. Et quod ita sit ponit se super recordum Iusticiariorum eorundem qualitercumque placitum istud fuerit irrotulatum. Et ex quo ipse habet diem versus dominum Regem in predicto placito hic ad hunc diem in eodem statu quo tunc etc. Idem Thomas modo sicut tunc precise petit iudicium super eadem excepcione quaprius etc. Et quo ad iudicium quod Dominus Rex asserit fuisse redditum in Curia predicti Regis patris etc. contra predictum Gilbertum patrem etc. pro predicta Comitissa dicit quod non habet necesse ad hoc respondere nisi Dominus Rex qui omnino est extraneus ipsi Comitisse prius docuerit de titulo suo etc.

Postea predictus Iohannes qui sequitur etc. protulit Curie transcriptum recordi Iudicii predicti redditum inter ipsam Comitissam et prefatum Gilbertum patrem predicti Thome sub pede sigilli scaccarii etc. in hec verba. Placita apud Westmonasterium coram Magistro Rogero de Seytone et sociis suis Iusticiariis de Banco de termino sancti Michaelis anno regni Regis Edwardi filii Regis Henrici quarto Incipiente quinto—§ Cumbria § Gilbertus de Hothwayt posuit loco suo Patricium de Hauerington vel Iohannem de Clapham versus Isabellam Comitisse Albe Marlie de placito quare impedit. Placita coram eisdem ibidem de termino sancti Hillarii anno predicti Regis Edwardi quinto. § Cumbria § Gilbertus de Hothwayt optulit se quarto die versus Isabellam de Fortibus Comitissam Albe Marlie de placito quod permittat ipsum presentare idoneam personam ad ecclesiam de Brigham que vacat et ad suam spectat donacionem etc. Et ipsa non venit. Et preceptum fuit vicecomiti quod attachiet eam quod esset hic ad hunc diem. Et vicecomes nichil

Note from the Record—*continued.*

And John that sueth etc. saith that the aforesaid Thomas ought not, by an exception of this kind, to detain the said lord King from his presentation etc. For he saith that the aforesaid Thomas in answering at another time to the presentations of the aforesaid Countess, whose estate in the aforesaid advowson the same lord King hath, was attempting by his answer to defeat the action of the lord King, as appeareth in the enrolment of the said plea. He asketh judgment whether he now can or ought to be received to take any fresh exception not contained in the record of the aforesaid plea as set out above.

And Thomas saith that he is ready to aver by the record of the Justices here, before whom he at other time pleaded with the lord King, that he raised that exception which he now allegeth, in challenging the counting of the lord King in the form aforesaid. And though, when it was said to the same Thomas by the Justices that he ought to show how the presentation etc. is regardant to the same Thomas if he want to have a writ to the Bishop, as the nature of this writ requireth, he showed his right amply for this purpose, as is aforesaid, in making further answer to the presentations of the aforesaid Countess, as the Court then compelled him to do, yet he never receded from his aforesaid exception; but, on the other hand, while he made further answer etc. in the aforesaid manner, he always reserved to himself the right to take the aforesaid exception and to have the advantage of the same exception. And that this is so he doth put himself upon the record of the same Justices, in what manner soever that plea shall have been enrolled. And by reason of all this he hath a day here against the lord King in the aforesaid plea upon this day in the same state in which then etc. The same Thomas doth now, as then, specifically ask judgment upon the same exception which before etc. And as to the judgment which the lord King doth assert was rendered in the Court of the aforesaid King, father etc., against the aforesaid Gilbert father etc., in favour of the aforesaid Countess, he doth say that he hath no need to reply to this unless the lord King, who is altogether a stranger to the said Countess, shall first show his title etc.

Afterwards the aforesaid John that sueth etc. tendered to the Court a transcript of the record of the judgment aforesaid rendered between the said Countess and the aforesaid Gilbert, father of the aforesaid Thomas, under the foot of the Seal of the Exchequer, in the words following. Pleas at Westminster before Master Roger of Seyton and his companions, Justices of the Bench, in the term of St. Michael in the fourth year and in the beginning of the fifth year of the reign of King Edward the son of King Harry. §Cumberland§ Gilbert of Hothwayt put in his place Patrick of Haverington or John of Clapham against Isabel Countess of Aumale of a plea of *quare impedit*—Pleas before the same in the same place in the term of St. Hilary in the fifth year of the aforesaid King Edward. §Cumberland§ Gilbert of Hothwayt offered himself on the fourth day against Isabel of Forz, Countess of Aumale, of a plea that she permit him to present a fit person to the church of Brigham, which is vacant and is regardant to his donation etc. And she doth not come. And the Sheriff had been charged to attach her that she be here on this day. And

Note from the Record—*continued.*

inde fecit set mandavit quod preceperat balliuis libertatis de Cokermue qui nichil inde fecerunt. Ideo preceptum est vicecomiti quod non omittat propter libertatem quin attachiet eam quod sit hic a die Pasche in .xv. dies. Et vnde vicecomes mandat etc. Placita ibidem coram eisdem de termino Pasche anno predicti Regis Edwardi quinto. Cumbria § Gilbertus de Hothwayt optulit se quarto die versus Isabellam de Fortibus Comitissam Albe Marlie de placito quod permittat ipsum presentare idoneam personam ad ecclesiam de Brigham que vacat et ad suam spectat donacionem etc. Et ipsa non venit, et fuit attachiata per Ricardum Cok de Cokermue et Walterum filium Iordani de eadem. Ideo ipsi in misericordia etc. Et preceptum est vicecomiti quod distringat eam per omnes terras etc. Et quod de exitibus etc. Et quod habeat corpus eius hic a die sancte Trinitatis in .xv. dies etc. Placita ibidem coram eisdem termino sancte Trinitatis anno predicti Regis Edwardi quinto. § Cumbria § Gilbertus de Hothwayt optulit se quarto die versus Isabellam de Fortibus Comitissam Albe Marlie de placito quod permittat ipsum presentare idoneam personam ad ecclesiam de Brigham que vacat et ad suam spectat donacionem etc. Et ipsa non venit. Et preceptum fuit vicecomiti quod distringat eam per omnes terras etc. Et quod habeat corpus eius hic ad hunc diem. Et vicecomes nichil inde fecit set mandavit quod preceperat balliuis libertatis de Cokermue qui nichil inde fecerunt. Ideo sicut prius preceptum est vicecomiti quod non omittat propter libertatem predictam quin distringat eam per omnes terras etc. Et quod de exitibus etc. Et quod habeat corpus eius hic a die sancti Iohannis Baptiste in .xv. dies etc. Et vnde vicecomes mandat etc. Adhuc placita ibidem de eodem termino de quindena sancti Iohannis Baptiste etc. Cumbria § Isabella de Fortibus Comitissa Albe Marlie summonita fuit ad respondendum Gilberto de Hothwayt de placito quod permetteret ipsum presentare idoneam personam ad ecclesiam de Brigham que vacat etc. Ita quod predicta Comitissa tercio die placiti scilicet tercio die post quindenam sancti Iohannis Baptiste paratam [*sic*] ad placitandum versus predictum Gilbertum. Et Gilbertus solempniter vocatus non venit nec aliquis nomine suo per quod predicta Comitissa petit Iudicium de defalta predicti Gilberti. Et dictum fuit eidem Comitisse per Iusticiarios quod exspectaret vsque in crastinum scilicet quartum diem quo die predicta Comitissa venit Et optulit se versus predictum Gilbertum. Et predictus Gilbertus solempniter vocatus non venit. Et predicta Comitissa petit iudicium de defalta illa. Et super hoc venit quidam essoniator Et dicit quod predictus Gilbertus est essoniatus. Et petit quod dies ei prefigatur etc. Et predicta Comitissa petit iudicium de defalta predicti Gilberti de tercio die placiti. Et quia non constabat Iusticiariis hic quod predictus Gilbertus non fuit essoniatus primo die secundo et tercio placiti nec aliquis tercio die placiti comparavit pro predicto Gilberto ad placitandum nec ad suam absenciam excusandum qualiter cumque sit

Note from the Record—*continued.*

the Sheriff did naught thereof, but sent word that he had charged the bailiffs of the liberty of Cockermouth, who did naught in the matter. So the Sheriff is charged that he is not, by reason of the liberty, to fail to attach her that she be here in the quindenes of Easter. And thereof the Sheriff sendeth word etc.—Pleas in the same place, before the same, of the Easter term in the fifth year of the aforesaid King Edward. §Cumberland§ Gilbert of Hothwayt offered himself on the fourth day against Isabel of Forz, Countess of Aumale, of a plea that she permit him to present a fit person to the church of Brigham, which is vacant and is regardant to his donation etc. And she doth not come, and she was attached through Richard Cok of Cockermouth and Walter the son of Jordan of the same vill. So these be in mercy etc. And the Sheriff is charged that he distrain her by all her lands etc. And that of the issues etc. And that he is to have her body here on the quindenes of the Holy Trinity etc.—Pleas in the same place, before the same, in the term of the Holy Trinity in the fifth year of the aforesaid King Edward. §Cumberland§ Gilbert of Hothwayt offered himself on the fourth day against Isabel of Forz, Countess of Aumale, of a plea that she permit him to present a fit person to the Church of Brigham, which is vacant and is regardant to his donation etc. And she doth not come. And the Sheriff had been charged that he distrain her by all her lands etc. and that he have her body here on this day. And the Sheriff did naught thereof, but sent word that he had charged the bailiffs of the liberty of Cockermouth, who did naught therein. So the Sheriff is charged as before that he is not to fail, by reason of the aforesaid liberty, to distrain her by all her lands etc. And that of the issues etc. And that he is to have her body here on the quindenes of St. John the Baptist etc. And thereof the Sheriff sendeth word etc.—Further pleas in the same place of the same term in the quindenes of St. John the Baptist etc.—Cumberland§ Isabel of Forz, Countess of Aumale, was summoned to answer Gilbert of Hothwayt of a plea that she permit him to present a fit person to the church of Brigham etc. So that the aforesaid Countess, on the third day of the plea, to wit, on the third day after the quindene of St. John the Baptist, appeared to plead against the aforesaid Gilbert. And Gilbert, being formally called, doth not come, nor doth anyone in his name; wherefore the aforesaid Countess asketh judgment of the default of the aforesaid Gilbert. And it was said by the Justices to the same Countess that she must wait till the morrow, to wit, the fourth day. And upon that day the Countess came and offered herself against the aforesaid Gilbert. And the aforesaid Gilbert, being formally called, doth not come. And the aforesaid Countess asketh judgment of that default. And thereupon a certain essoiner cometh. And he saith that the aforesaid Gilbert was essoined. And he asketh that a day be appointed for him etc. And the aforesaid Countess asketh judgment of the default of the aforesaid Gilbert on the third day of the plea. And because it appeared to the Justices here that the aforesaid Gilbert was not essoined on the first, second and third days of the plea, and that no one appeared on the third day of the plea on behalf of the aforesaid Gilbert to plead or to excuse his absence, any essoin that might be found enrolled for the fourth

Note from the Record—continued.

quod essonium inuentum fuerit irrotulatum quarto die placiti Consideratum est quod essonium illud de quarto die placiti nullum. Et quod predicta Comitissa inde sine die etc. Et predictus Gilbertus et plegii sui de prose-
quendo in misericordia etc. Querantur nomina plegiorum etc. Et pre-
dicta Comitissa habeat breue ad Archidecanum Richemundensem quod non
obstante etc. quin ad presentacionem predictae Comitisse ad predictam
ecclesiam idoneam personam admittat. Et sciendum quod loquela ista
irrotulata fuit a die sancti Iohannis Baptiste in .xv. dies anno regni Regis
nunc sexto per preceptum I. de Louetot et per eius recordum etc. unde idem
Iohannes qui sequitur etc. dicit quod predictum recordum satis constare
potest in hac parte de iure et possessione dicte Comitisse etc. Et petit
Iudicium si predictus Thomas per medium predicti Gilberti patris etc. aliquid
clamare possit in aduocacione predicta etc.

Et Thomas dicit vt prius quod ipse non habet necesse respondere ad
aliquod recordum quod predictus Iohannes qui sequitur etc. allegat prius-
quam Dominus Rex qui est omnino extraneus ipsi Comitisse ostenderit
titulum per aliquod factum speciale ipsius Comitisse etc. Dicit etiam quod
ipse istam eandem excepcionem ad narrationem domini Regis alias pro-
ponebat vt predictur a qua quidem excepcione hucusque non recessit set
inde semper petiit allocacionem etc. Et quod ita sit ponit se super recordum
Iusticiariorum etc. Et super hoc Willelmus de Bereford et Heruicus de
Stauntone Iusticiarii hic etc. quorum [*sic*] quibus partes predictae ad prefatam
quindenam sancti Iohannis Baptiste alias placitauerunt recordantur in
hec verba. Et Thomas venit. Et petit quod ex quo Dominus Rex dicit pre-
fatum Regem patrem suum perquisisse predictam aduocacionem de predicta
Comitissa quod ostendatur ex parte domini Regis aliquod factum speciale
de perquisicione predicta etc. Et super hoc nullum factum speciale ostensum
est ex parte Regis etc. Et Thomas dixit quod ex quo ex parte domini Regis
nullum factum est ostensum de perquisicione predicta nec dictum est pro
Rege quod Dominus Rex nunc seu predictus Rex pater suus vnquam ad
predictam ecclesiam prius presentauerunt etc. per quod possessio aduocacionis
predictae que est quoddam grossum in persona alterius Regum predictorum
se vestiuit etc. non intendit quod Dominus Rex velit tali narrationi
[respondere]. Et petit allocacionem etc. Et sic per hoc dictum fuit predicto
Thome per Iusticiarios quod si velit breue habere Episcopo etc. in hoc casu
quod dicit quomodo ad ipsum Thomam pertinet presentare etc. Et Thomas
dixit quod ipse paratus est dicere qualiter ad ipsum pertinet presentare set
non recedendo ab excepcione sua predicta unde dictum fuit ei per Iusticiarios
quod ipsi non cassant excepcionem predictam. Dicat tantum pro parte sua
quod sibi visum fuerit etc. Et Thomas salua excepcione sua predicta dixit
quod ad ipsum pertinet presentare rationibus predictis etc.

Pretextu quorum breuium et petitionis Iohannes de Beuerlaco qui sequitur
pro domino Rege ad prefatam quindenam sancti Hillarii coram domino

Note from the Record—*continued.*

day of the plea was null. And [they considered] that the aforesaid Countess should go away without day etc. And the aforesaid Gilbert and his pledges for prosecution are in mercy. The names of the pledges etc. are to be inquired of. And the aforesaid Countess is to have a writ to the Archdeacon of Richmond that notwithstanding etc. he is not to fail to admit a fit person to the aforesaid church on the presentation of the aforesaid Countess. And it is to be noted that the record of this action was enrolled by the instructions of J. of Lovetot on the quindene of St. John the Baptist in the sixth year of the reign of the King that now is, and by his record. And in respect thereof the same John that sueth etc. saith that the aforesaid record sufficiently proveth for the present matter the right and possession of the said Countess etc. And he asketh judgment whether the aforesaid Thomas can claim aught through the mesne of the aforesaid Gilbert father etc., in the aforesaid advowson etc.

And Thomas saith, as before, that he hath no need to answer any record which the aforesaid John that sueth etc. doth allege, before that the lord King who is wholly a stranger to the said Countess shall show his title by some specialty of the said Countess etc. For he saith that at another time, as is aforesaid, he raised that same exception to the counting of the lord King, from which exception he hath not up to now gone back, but hath always asked that it be allowed etc. And that this is so he doth put himself upon the record of the Justices etc. And as to this William of Bereford and Hervey of Stanton, Justices here etc., before whom the aforesaid parties pleaded elsewhere on the aforesaid quindene of St. John the Baptist, record as here followeth. And Thomas cometh. And he asketh that because the lord King doth say that the aforesaid King Edward his father purchased the aforesaid advowson from the aforesaid Countess he may show, on behalf of the lord King, some specialty in proof of the aforesaid purchase etc. And thereupon no specialty is shown on behalf of the lord King etc. And Thomas said that since no specialty is shown on behalf of the lord King in proof of the aforesaid purchase, nor hath it been said on behalf of the King that the lord King that now is nor the aforesaid King his father did ever aforetime present to the aforesaid church etc. so that the possession of the aforesaid advowson, which is a certain gross, vested in the person of either of the aforesaid Kings etc. he doth not think that the lord King will desire to be answered to such a counting. And he asketh that the exception be allowed etc. And it was therefore said to the aforesaid Thomas by the Justices that if he wish to have a writ to the Bishop etc. in these circumstances he must say how it belongeth to the same Thomas to present etc. And Thomas said that he is ready to say how it belongeth to him to present, while still abiding by his aforesaid exception; in respect of which the Justices tell him that they do not quash the aforesaid exception. He is to say on his own behalf what shall seem to him etc. And Thomas, saving to himself his aforesaid exception, said that it belonged to him to present for the reasons aforesaid etc.

By reason of which writs and petition John of Beverley that sueth etc., for the lord King cometh *coram Rege* on the aforesaid quindene of St. Hilary

Note from the Record—*continued*.

Rege venit et Hugo de Courteney per adiornamentum predictum et Thomas de Hothwayt per prefixionem predicti Willelmi de Bereford similiter veniunt Et predictus Iohannes de Beuerlaco pro domino Rege dicit quod ad ipsum dominum Regem pertinet presentare ad ecclesiam predictam. Dicit enim quod quedam Isabella de Fortibus quondam Comitissa Albe Marlie que de domino Rege patre domini Regis nunc tenuit in capite obiit seisita de aduocacione predicta simul cum aliis terris etc. aduocacionibus ecclesiarum et feodis militaribus etc. post cuius mortem idem dominus Edwardus Rex pater Regis nunc per Escaetorem suum easdem terras et tenementa simul cum aduocacione predicta etc. ratione prerogatiue et regie dignitatis sue etc. seisire fecit in manum suam et aduocacionem predictam toto tempore suo sic tenuit post cuius mortem aduocacio predicta in manum domini Regis nunc deuenit et sic eam adhuc in manum suam tenet absque hoc quod aliquis heres ipsius Isabelle post mortem eiusdem Isabelle tempore domini Regis Edwardi patris etc. aut domini Regis nunc vsque modo aduocacionem predictam de seisina ipsorum Regum exigebat quoquo modo etc. vnde dicit quod ad ipsum dominum Regem pertinet presentare ratione aduocacionis ecclesie predictae adhuc in manu sua sic existentis. Et predictus Thomas non potest hoc dedicere. Ideo dominus Rex habeat breue Archidiacono Richemundensi loci Diocesano quod non obstante reclamacione predicti Thome idoneam personam ad ecclesiam predictam admittat etc. Et predictus Iohannes de Beuerlaco quo ad petitionem predicti Hugonis pro domino Rege dicit ipsum dictum Hugonem per eandem rationem presentare ad predictam ecclesiam quam supra dictum est etc. quam idem Hugo non potest dedicere. Ideo dominus Rex habeat breue Archidiacono predicto loci diocesano quod non obstante reclamacione predicti Hugonis ad ecclesiam predictam idoneam personam admittat etc.

33. FORD *v.* BURNEL.¹

Dette ou le bref sabatist pur ceo qe le accion ne conisa en nul certain tens etc.

Adam de la forde porta son bref de dette vers Edward Burnel et ly demanda .xl. li. qe atort ly detint.

Denum. demanda ceo qil auoit de la dette.

Hengh. Veez icy le fet Phelip vostre pere etc.

Et le escrit voleit qe Phelip se obliga pur ly et pur ces heirs estre tenuz a Adam de la forde a tote sa vie en deux Robes des esquiers et en .x. marz par an et qe le dit Adam demoerit oue ly et oue ses heires a tote sa vie oue .iiij. Chiuas en temps de pes et de guerre solom lour

¹ Reported by Y. Names of the parties from the Record.

Note from the Record—continued.

and Hugh of Courteney, by the aforesaid adjournment, and Thomas of Hothwayt, by the appointment of the aforesaid William of Bereford, come likewise. And the aforesaid John of Beverley saith on behalf of the lord King that it doth belong to the said lord King to present to the aforesaid church. For he saith that a certain Isabel of Forz, aforesaid countess of Aumale, who held in chief of the lord King that was father of the lord King that now is, died seised of the aforesaid advowson, together with other lands etc., advowsons of churches and knights' fees etc.; upon whose death the same lord King Edward, father of the King that now is, did by his Escheator cause the same lands and tenements, together with the aforesaid advowson etc. to be seized into his hand, by reason of his prerogative and his royal dignity etc., and he so held the aforesaid advowson all his time; and after his death the aforesaid advowson came into the hand of the King that now is, and so he doth still hold it in his hand without any heir of the said Isabel after the death of the same Isabel, during either the time of the lord King Edward father etc., or of the lord King that now is up to now, claiming in any way the aforesaid advowson out of the seisin of the said kings etc.; and so he saith that it belongeth to the said lord King to present by reason that the advowson of the aforesaid church is still in his hand. And the aforesaid Thomas cannot deny this. So the lord King is to have a writ to the Archdeacon of Richmond, diocesan of the place, that he admit a fit person to the aforesaid church etc., the claim of the aforesaid Thomas notwithstanding. And the aforesaid John of Beverley, as to the petition of the aforesaid Hugh, saith on behalf of the lord King that the said Hugh claimeth to present to the aforesaid church on the same grounds as stated above etc., as the same Hugh cannot deny. Therefore the lord King is to have a writ to the Archdeacon aforesaid, diocesan of the place, that he admit a fit parson to the aforesaid church etc., the claim of the aforesaid Hugh notwithstanding.

33. *FORD v. BURNEL*.¹

Debt: where the writ abated because there was no certain time when right of action accrued.

Adam of the Ford brought his writ of debt against Edward Burnel, and claimed from him forty pounds, which he wrongfully detained from him.

Denham asked what proof Adam had of the debt.

Ingham. See here the deed of Philip your father etc.

And the purport of the writing was that Philip bound himself, for himself and his heirs, to be held to Adam of the Ford during the whole of his life in two esquire's robes and in ten marks yearly, and [it was agreed] that the said Adam should abide with him and with his heirs all his life, with three horses, in times of peace and of war,

¹ See the *Introduction*, p. xxxviii.

nature. Estre ceo le dit Phelip granta et se obliga pur ly et pur ses heirs a feffer le dit Adam de xij. li. de Rente en Suineton en le counte de Norhamptone de deinz les procheins .vj. anz apres la confeccioun de ceste escrit ou qil le fut tenuz en .xl. li. par qi Adam vint souent a Phelip apres les .vj. anz passes en sa vie et rien ne ly fit et apres son deces vint a Edward com a fyz et heir qe rien ne ly fyt etc. issi etc.

Denum. Vous auez ben entendu coment il prouent la cause de ceste accion de ceo qe nostre auncestor ou nous ly fumes tenuz a feffer de .xij. li. de Rente en Suintone dedens les .vj. anz et si nous ne feisoms qe nostre auncestor ou nous fusums tenuz a Adam en .xl. li. dedens les .vj. anz etc. dont la cause et laccion si sount de vn mesme temps qar de feffer dedens les .vj. anz et si nous ne etc. qe nous ne seoms tenuz dedens les .vj. ans en .xl. li. et issi etc. demandoms iugement etc.

Pass. En vostre ellecion fut dauer feffe etc. et par vostre defaute demene si demandoms ceste dette.

Denum. Vostre accion ne est funde suz nul certain tens et demandoms iugement.

Pass. Il ne fut pas homme de court qe tel escrit ordena einz fut vn armuret.

Ber. Les armuretes seuent moud ben compasser vn mauoiste.

Ber. Ioe ne vei nient coment dette put estre demande saunz ceo qe laccion ne vst commence en ascun certain tens etc. Mes vostre escrit voet qe si il ne vous feffe de dens les .vj. ans qil vous seit tenuz en .xl. li. dedens mesme les .vj. anz et issi la dette de nul certain tens.

Et postea petunt licenciam perquirendi melius breue etc.

[rendering services] according to the nature of the time. The said Philip further granted and bound himself, for himself and his heirs, to enfeoff the said Adam of a rent of twelve pounds in Swinethorpe¹ in the County of Nottingham within the six years next after the making of this writing or that he should be bound to him in forty pounds. In consequence of the premises Adam often went to Philip, after the expiration of the six years, during Philip's lifetime, but he did naught for him ; and after Philip's death he went to Edward as his son and heir, who did naught for him etc., so etc.

Denham. You have heard what they say in support of this action, how that our ancestor or ourselves were bound to enfeoff Adam of a rent of twelve pounds in Swinethorpe within six years, and if we did not do so, then our ancestor or ourselves were bound to him during the same six years in forty pounds etc. So that the cause of action and the right to bring action are of the same time. We are to enfeoff him within the six years, and if we do not etc., then within those six years we are bound to him in forty pounds ; and so etc. we ask judgment etc.

Passeley. It was in your election to have enfeoffed us etc. and because it was by your own default that you did not we ask judgment of this debt.

Denham. Your action is not based upon any certain time, and we ask judgment.

Passeley. It was no lawyer who drafted such an agreement, but a man-at-arms.²

BEREFORD C.J. Men-at-arms are clever hands at making a mess of work of this sort.

BEREFORD C.J. I do not see how debt can be claimed unless the right of action ariseth at some certain time etc. Your writing is to the effect that if he doth not enfeoff you within the six years then within those same six years he is bound to you in forty pounds ; and so there is no certain time when the debt becometh due.

And afterwards they sought licence to purchase a better writ etc.

¹ Swinethorpe is in Lincolnshire, close to the Nottinghamshire boundary. The *Norhamptone* of the text is obviously a slip for *Nottingham*.

² It is impossible to convey the meaning of the French *armeret* in a single English word. Godefroy defines it as :—*poli, galant, qui a la passion des*

armes et de la gloire. And we remember that according to an old French phrase — *il en parla comme un escolier d'armes*—such an one's intelligence was not rated highly. Possibly *Passeley* means that the agreement in this case was drafted by Adam of the Ford himself.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 32d., Somerset.

Edwardus filius Philippi Burnel summonitus fuit ad respondendum Ade de la Forde de placito quod reddat sexaginta libras quas ei debet et iniuste detinet etc. Et vnde idem Adam per Walterum de Cumtone attornatum suum dicit quod cum die Assumpcionis beate Marie anno regni Regis Edwardi patris domini Regis nunc decimo septimo apud Cantuariam convenisset inter Philippum Burnel patrem predicti Edwardi cuius heres ipse est ex vna parte et predictum Adam ex altera videlicet quod predictus Adam commoraret cum predicto Philippo cum tribus equis et ei deseruiret infra quatuor maria Anglie tempore pacis et guerre secundum naturam vtriusque temporis pro posse eiusdem Ade ad custagium ipsius Philippi Et idem Philippus inueniret dicto Ade duas robas per annum et eciam daret ei decem marcas per annum singulis annis ad pascham quousque faceret ei habere duodecim libratas terre in villa de Sweyntone in Comitatu Notinghamie et si contingeret quod illas duodecim libratas terre infra sex annos proximo sequentes eidem Ade habere non fecisset daret ei predictas sexaginta libratas infra eundem terminum et ad premissa fideliter tenenda predictus Philippus obligauit se et heredes suos etc. predictus Philippus predictas duodecim libratas terre in predicta villa infra sex annos predictos eidem Ade habere non fecit per quod idem Adam sepius requisiiuit predictum Philippum in vita sua et similiter predictum Edwardum filium et heredem ipsius Philippi post mortem eiusdem Philippi quod predictas sexaginta libratas ei redderent etc. et ipsi denarios illos ei hucusque reddere contradixerunt et adhuc contradicunt etc. vnde dicit quod deterioratus est et dampnum habet ad valenciam quadraginta librarum Et inde producit sectam etc. Et profert partem cuiusdam scripti inde inter partes predictas indentati que predictam conuencionem testatur in forma predicta etc.

Et Edwardus per Henricum de Hexstone attornatum suum venit Et defendit vim et iniuriam quando etc. Et dicit quod non debet ei ad talem narrationem respondere. Quia dicit quod idem Adam per formam narrationis sue exigit predictum debitum tanquam quoddam forisfactum pro eo quod predictus Philippus habere non fecit predicto Ade predictas duodecim libratas terre etc. infra sex annos post diem confeccionis predicti scripti et quod quidem debitum idem Philippus ei soluisse debuit infra eosdem sex annos etc. antequam illud forisfecisse potuit quod est inconueniens etc. vnde petit iudicium etc.

Dies datus est eis de audiendo iudicio suo in Octabis sancte Trinitatis etc. quod iudicium nondum etc. Postea ad diem illum predictus Edwardus fecit se essionari versus predictum Adam de predicto placito Et habuit diem per essionium hic ad hunc diem scilicet in Crastino Animarum Ad quem diem venit tam predictus Adam quam predictus Edwardus per attornatos

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 32d., Somerset.

Edward, son of Philip Burnel, was summoned to answer Adam of the Ford of a plea that he pay him sixty pounds which he doth owe him and doth unjustly detain etc. And, in respect of this, Adam, by Walter of Compton, his attorney, saith that on the Feast of the Assumption of the Blessed Mary in the seventeenth year of the reign of King Edward, father of the lord King that now is, an agreement was made at Canterbury between Philip Burnel, father of the aforesaid Edward, whose heir Edward is, of the one part, and the aforesaid Adam of the other part, to wit, that the aforesaid Adam should abide with the aforesaid Philip with three horses, and should serve him within the four seas of England in the time of peace and of war according to the character of the time, to the best of the ability of the same Adam, at the charges of the said Philip, and the same Philip should provide for the said Adam two robes a year and eke give him ten marks a year every single year at Easter until that he should have made him have land of the rental value of twelve pounds in the vill of Swinethorpe in the County of Nottingham; and if it should so happen that he should not make the said Adam have that land of a rental value of twelve pounds within the six years next following then he was to give him the aforesaid sixty pounds within the same term; and the aforesaid Philip bound himself and his heirs etc. to the faithful observance of the premises. Yet the aforesaid Philip did not make the said Adam have the aforesaid land of a rental value of twelve pounds in the aforesaid vill within the six years aforesaid. Wherefore the same Adam did oft-times request the aforesaid Philip during his lifetime, and likewise the aforesaid Edward, son and heir of the said Philip after the death of the same Philip, to pay him the aforesaid sixty pounds etc., and they have hitherto refused to pay him that money and still do refuse etc., whereby he saith that he hath suffered loss and hath damage to the amount of forty pounds. And thereof he produceth suit etc. And he maketh *profert* of a part of a certain writing thereof indented between the aforesaid parties which witnesseth the aforesaid agreement in the form aforesaid etc.

And Edward cometh by Harry of Hexton his attorney. And he defendeth force and wrong when etc. And he saith that he ought not to answer Adam on such a counting. For he saith that the same Adam doth by the form of his counting claim the aforesaid debt as a certain penalty for that the aforesaid Philip did not make the aforesaid Adam have the aforesaid land of a rental value of twelve pounds etc. within six years after the day of the making of the aforesaid writing, and which said debt the same Philip ought to have paid him within the same six years etc. before that penalty could have accrued, which is incongruous etc., and thereof he asketh judgment etc.

A day is given them to hear their judgment in the octaves of the Holy Trinity etc., because judgment is not yet etc. Afterwards on that day the aforesaid Edward made himself to be essoined against the aforesaid Adam of the aforesaid plea. And he had a day by esoin here upon this day, to wit on the Morrow of All Souls. Upon which day both the aforesaid Adam and the

Note from the Record—*continued*.

suos Et datus est eis dies hic a die Pasche in .xv. dies etc. de audiendo iudicio suo prece parcium sine essionio. Postea ad diem illum venit predictus Adam per Walterum de Suinctone attornatum suum. Et optulit se iiij. die versus predictum Edwardum de placito predicto Et ipse non venit Et habuit diem hic ad hunc diem prout patet superius. Ideo preceptum est vicecomiti quod distringat eum per omnes terras etc. Et quod de exitibus etc. Et quod habeat corpus eius hic In octabis Sancti Michaelis auditurum inde iudicium suum etc.¹

34. THE ABBOT OF BAYHAM *v.* HYDENYE AND OTHERS.²I.³

De aueriis fugatis extra feodum et Comitatum ou le pleintif dit et alegga qe le luw etc. fut hors de la fraunchise de .v. portes solom ceo qe troue fut autre foye par record et le defendant dit le reuers et fut ressu al auerement pur ceo qil ne fut pas partie etc.

Labbe de Becham porta son bref de trespas *de aueriis fugatis extra Comitatum* et counta qe atort auoit pris ces auers nomement .ix. beofs et a force et as armes et les enchasa tant a Oham deinz les .v. portz en coudre la Custoume du Realme etc.

West. defendi etc. et qant qest en coudre la ley et custoume etc. vous dioms qil ne deyuent ceynz respoundre ne ceo play en ceste court estre plede. Car il sunt de .v. portz etc. Et le Roy ad graunte a .v. portz qil ne deyuent en nul luw pleder ne estre enplede si noun a *Sepeuere* deynz les portz.

Stonor. Volet vous dire qe Oham est deinz la fraunchise de .v. portz et nent de cors du counte.

West. vt prius et mist auant vne Chartre le Roy qe ceo testmoigne.

Scrop. Il ne ad nul bailiff qe demande la fraunchise ⁴et tot vst il bailiff il ne poit pas doner iour a eus mesmes.⁵

¹ Nothing further is recorded in the matter.
Names of the parties from the Record.

² Reported by *G* and *Z*.

³ Text of (I) from *G*.

⁴ ⁵ The

text must be corrupt here. See the second version.

Note from the Record—*continued*.

aforesaid Edward came by their attorneys. And a day is given them here in the quindenes of Easter, by the prayer of the parties, without essoin, to hear their judgment. Afterwards upon that day the aforesaid Adam came by Walter of Swinethorpe his attorney. And he offered himself on the fourth day against the aforesaid Edward of the plea aforesaid. And Edward doth not come; and he had a day here upon this day, as appeareth above. So the Sheriff is charged to distrain him by all his lands etc. And that of the issues etc. And that he have his body here in the octaves of St. Michael to hear his judgment in the matter etc.

34. THE ABBOT OF BAYHAM *v.* HYDENYE AND OTHERS.

I.

Cattle driven outside the fee and county. The plaintiff saith and allegeth that the place at which the cattle were seized was without the franchise of the Cinque Ports, and that this had been aforetime found by inquest that was of record. The defendant pleaded the contrary, and he was received to aver it, because he was not privy to the previous action.

The Abbot of Bayham brought his writ of trespass in respect of cattle driven outside the county; and he counted that the defendants had wrongfully seized his cattle, to wit, nine oxen, with force and arms, and had driven them to Otham¹ within the Cinque Ports, against the custom of the Realm etc.

Westcote defended etc.; and as to what they say about it being against law and custom etc., we say that the defendants ought not to make answer here, nor ought this plea to be pleaded in this court. For the defendants are men of the Cinque Ports. And the King hath granted to the Cinque Ports that they shall not plead nor be impleaded except at the Court of Shepway within the Ports.

Stonor. Do you want to say that Otham is within the franchise of the Cinque Ports and not within the body of the county?

Westcote as before; and he tendered a charter by the King in witness thereof.

Scrope. There is no bailiff [here] that claimeth the franchise, and even though they had a bailiff here they could not give themselves a day.²

¹ The scribe has certainly mis-stated the Abbot's counting here, for it was the Abbot's contention that Otham was not within the liberty of the Cinque Ports. Moreover it was, *teste Rotulo*,

to Pevensey that the cattle were driven, and at Otham that they were seized.

² *I.e.* for appearance in the court of the franchise. But see the text and note on the opposite page.

West. Nous ne demandoms pas la fraunchise einz dioms qe nous ne deuoms estre enplede ne pleder si noun etc.

Brab. Vostre chartre si est en autre manere interprete qe vous ne dedites poynt qe si vous auet trespasse hors de vostre fraunchise il couendret respoudre.

West. En affermaunt nostre respouns nous dioms qe Oham est deinz les portz.

Scrop. Ceo ne put il dire Car autre foye ceynz porta mesme cesti abbe bref de trespas deuant vous certain ior et an etc. de trespas a ly fet en mesme le luw ou il se pleynt ore vers Ion de F. baillif de la fraunchise ou Ion dit qe Oham fut deynz les portz ausicom vous dites ore. Et labbe dit qil fut deinz le Cors le Counte et ceo voloms auerer par record. Et desicom la court est encerte et ceo a la commune ley iugement si a cel auerement etc.

Malm. Vous allegget vne enqueste qe passa entre estrange persones a qi vous nestes my partie. *Et res inter alios acta aliis preiudicare non debet.*

Roub. Il dit qe vne enqueste passa de ceo ceynz entre cely qe fut baillif et labbe et issi la court encerte par qi il nestut my autre foie denquerer de chose dunt la court eit autrefoie encerte par record.

Malm. Coment qil diunt qe Ion fut baillif et partie al autre enqueste nous vous dioms qil ne fut pas baillif einz fut le homme labbe et vncore est et porte ces Robes et lenqueste par couyge [*sic*] entre eus et issi passa lenqueste entre eus sanz nule chalange de Iorours et nous mettoms auant la Chartre le Roy qe veet etc.

Herle. Ion pleda com baillif ausi fort com vous fetes al enqueste et ele passa en countre ly et la court encerte de ceo pleee.

Frisk. Ion nest [*sic*] pas baillif ne vncore nest mes vn G. Et labbe ne noma my cesti en son bref et si cel enqueste entre estrangez parties lyereit si serroit la fraunchise perdue qe Labbe put porter bref deuers son souget qe le pleee irroit oue ly par concentement de eus et issi passareit lenqueste sanz chalenge et issi le seconde et le terce et issint la fraunchise perdue.

Hert. Coment qe vous dites qe G. est baillif ausi been pussent autrefoye dire qil ne fut pas baillif et issi passeront .xx. enquestez. *Et dautre part* la ou vous dites qe lenqueste passa par concentement ceo ne poet dire. Car pleee par concentement cest entre parties au bref

Westcote. We do not claim the franchise, but we say that we ought not to be impleaded nor to plead except etc.

BRABAZON C.J. (K.B.). Your charter hath been interpreted in other fashion; and you do not deny that if you have committed a trespass outside your franchise you ought to answer.

Westcote. In affirming our answer, we say that Otham is within the Ports.

Scrope. He cannot say that, for this same Abbot at another time brought a writ of trespass here before you of a trespass committed against him on a certain day and year etc., in the same place as is now laid in his plaint, against John of F., bailiff of the franchise, in which John said that Otham was within the Ports, even as you say now. And the Abbot said that it was within the body of the county; and that we will aver by the record. And since the Court is certified, we ask judgment whether by the common law they can against this averment etc.

Malberthorpe. You allege an inquest that passed between strangers to which you are not privy; *et res inter alios acta aliis preiudicare non debet.*

ROUBERY J. He saith that an inquest passed here of this question between one that was bailiff and the Abbot, and so the court is certified of it, and it is consequently unnecessary to inquire again of a matter of which the Court is already certified by record.

Malberthorpe. Though they say that John was bailiff and was privy to the other inquest, we tell you that he was not bailiff, but the Abbot's man, and he still is, and he weareth his livery; and the inquest was by collusion between them, and so it passed between them without any challenge of the jurors; and we tender the charter by the King which witnesseth etc.

Herle. John pleaded as bailiff at the inquest as strongly as you are doing, and it passed against him; and the court is certified of this plea.

Friskenev. John was not bailiff, nor is he now, but one G. is. And the Abbot did not name this one in his writ; and if this inquest between strange parties should bind us the franchise would be lost, for the Abbot could bring a writ against his subject, where the pleading would be by collusion between them, and so the inquest would pass unchallenged, and so the second and the third, and so the franchise would be lost.

Hartlepool. Though you say that G. is bailiff, they could just as well have said before that he was not, and so twenty inquests might pass. And, besides, whereas you say that the inquest passed by consent, you are not entitled to say that. For a plea by consent is

mes il pledereynt a ceo point a quel vous ore pledet et sor ceo lenqueste passa. Et la ley ne suppose my qe lenqueste passereit autrement qe veritable par la ou il sunt chargez etc.

Malm. Vous auet icy le baillif et plusors autrez de la fraunchise qe tendunt cel auerement et lautre enqueste passa en contre Ion soul et vncore demurt la execucion par qi il piert qe cel enqueste passa par concentement entre Ion et Labbe.

Toud. La execucion demurt qil sunt tuz nomez en le primer bref et nous ne pooms auer la execucion si la qe les autrez soient atteinz. Et qe Oham est du cors du Counte et nent denz la fraunchise prest etc.

Et alii e contra.

II.¹

Bref de trespas fundu sur estatut.

Vne [*sic*] Abbe porta bref de trespas fundu sur estatut des [*sic*] ses biens emportez en temps son predecessor vers A. et B. ou le baillif des Cynk portes vynt et dit qe A. et B. furent de S. qest membre de Maner de R. qest de Cyn [*sic*] ports et qil deiuint pleder a Shepye et aillors nyent et pur ceo qe la partie fust assone et nul chalenge mys sur lassone il ne fust mye resceu et puis A. et B. disoient qil furent de Cynk ports et qil dussent pleder a Shepeye et mustrent auant la Chartre le Roi qe testmoigne de ceo et a ceo fut dit qe ceo ne gist mye en lour bouche mes en la bouche le bailiff sil eust venu par temps qe autre ne put fraunchise demander si noun celui qe put doner iour a la partie et a ceo fust dit qe si vn home fust de aunciene demesne le Roi qil girreit bien en sa bouche a dire qil fust del aunciene demesne auxi par de cea etc.

Note from the Record.

Coram Rege Rolls, Hil., 5 Edw. II. (No. 207), r. 48, Sussex.

Simon de Hydenye Martinus Bren Robertus de Bromhame Iohannem [*sic*] Bregel Iustinus de Bothel Willelmus Alman Iohannes Molyn Iohannes le Bakere Iacobus de Cranle Thomas Wygge Simon Litle Watte Bartholomaus de Wytedyke Willelmus atte Bereghe Walterus Croup Iohannes Lot Thomas Chilly et Iohannes Russel de Peuenese attachiati fuerunt ad respondendum Abbati de Begeham de placito quare aueria ipsius Abbatis apud Ottenham

¹ Text of (II) from Z.

between the parties to the writ ; but there they were pleading to the particular point to which you are now pleading, and it was upon that point that the inquest passed. And the law will not assume that the inquest found other than a true verdict upon the point on which it was charged etc.

Malberthorpe. You have here the bailiff and several others of the franchise who offer this averment, and the other inquest passed against John alone ; and execution is still in abeyance, from which fact it seemeth that that inquest passed between John and the Abbot by consent.

Toudeby. Execution is in abeyance because all the defendants were named in the first writ, and we cannot have execution until all the others [besides John] have been convicted. And that Otham is of the body of the county and not within the franchise, ready etc.

And the other side joined issue.

II.

Writ of trespass founded on the Statute.¹

An abbot brought a writ of trespass founded on the statute against A. and B. in respect of his goods carried away in the time of his predecessor. The bailiff of the Cinque Ports came and said that A. and B. were of S. that is a member of the manor of R. which is of the Cinque Ports, and that they ought to plead at the Court of Shepway and nowhere else. But because the plaintiff had been essoined and no objection taken (on the essoin), he was not received. And afterwards A. and B. said that they were of the Cinque Ports and that they ought to plead at the Court of Shepway, and they tendered a charter from the King in testimony of this ; and to this it was said that it lay not in their mouth to allege this, but in the mouth of the bailiff, had he come at the fitting time, for none could claim franchise save him only that could give a day to the parties ; and to this it was replied that if a man were of the ancient demesne of the King it lay well enough in his mouth to say that he was of the ancient demesne ; and so here etc.

Note from the Record.

Coram Rege Rolls, Hil., 5 Edw. II. (No. 207), r. 48, Sussex.

Simon of Hydenye, Martin Bren, Robert of Bromham, John Bregel, Justin of Bothel, William Alman, John Molyn, John the Baker, James of Cranley, Thomas Wygge, Simon Littlewatte, Bartholomew of Whitedyke, William atte Berghe, Walter Croup, John Lot, Thomas Chilly and John Russell of Pevensey were attached to answer the Abbot of Bayham of a plea why with force and arms they took the cattle of the said Abbot at

¹ Statute of Marlborough, cap. iv.

Note from the Record—continued.

in Comitatu predicto vi et armis ceperunt et ea de loco illo vsque ad Peuenese que est infra libertatem quinque portuum fugauerunt et ea adhuc ibidem imparcata detinent contra legem et consuetudinem regni Regis et contra pacem etc. Et vnde queritur quod predicti Simon et alii die Iouis proxima ante festum sancti Michaelis anno regni regis nunc tercio aueria predicti Abbatis videlicet quatuor equos precii quatuor librarum Octo boues precii decem librarum duodecim vaccas precii octo librarum vnum taurum precii viginti solidorum duodecim bouiculos precii octo librarum triginta et septem porcos precii quatuor librarum apud Ottenham vi et armis ceperunt et ea de loco illo vsque ad Peuenese que est infra libertatem quinque portuum fugauerunt et ea adhuc imparcata detinent contra legem et consuetudinem regni Regis etc. vnde dicit quod deterioratus est et dampnum habet ad valenciam Trescentarum librarum. Et inde producit sectam etc.

Et predicti Simon et alii veniunt et defendunt vim et iniuriam quando etc. Et dicunt quod ipsi sunt homines libertatis quinque portuum et quod non debent placitare de aliquo placito alibi quam in Shipway infra libertatem predictam. Et proferunt inde cartam domini Regis etc. que hoc idem testatur. Et dicunt quod predicta villa de Ottenham vbi dictus Abbas supponit transgressionem predictam sibi fieri est infra libertatem predictam Et petunt inde libertatem etc. Et predictus Abbas dicit quod ipsi libertatem inde habere non debent quia dicit quod predicta villa de Ottenham est de corpore Comitatus et non infra libertatem etc. Et hoc petit quod inquiratur per patriam. Et Simon et alii similiter. Ideo veniat inde Iurata coram Rege a die Pasche in tres septimanas vbicunque etc. Et qui nec etc. ad recognizandum etc. Quia tam etc. Et quia predicti Simon et alii veniunt per exigendum Ideo committuntur Marescalcie. Et super hoc veniunt Rogerus de Beby Ricardus le Blound Rogerus de Kent et Thomas de Bradefeld de Ciuitate Londonii Andreas de Bermyngham Ricardus de Toftes Robertus de Erlham Willelmus filius Iohannis de Neuport Henricus de Lakenham Willelmus de Bestone Iohannes de Mondham de Comitatu Norfolcie Iohannes Child et Robertus de Foxtone de Comitatu Suffolcie Iohannes de Chidynghstone Edmundus de Cornhill de Comitatu Kancie Iohannes de Benelond de Comitatu Surreye Ricardus de Knaptone de Comitatu Eboraci Edmundus de Cantebregia de Comitatu Cantebregie Iohannes Saleman et Simon atte Hide de Comitatu Sussexie Simon de Beyngtone et Adam de Houedene de Comitatu Lincolnie et Gilbertus Apehele de eodem Comitatu Lincolnie et Ricardus atte Bergh de Comitatu Sussexie [et] manuceperunt predictos Simonem et alios habendi eos coram Rege ad prefatum terminum et sic de die in diem et de termino in terminum etc. audituros inquisitionem predictam etc.

Postea in crastino Animarum anno regni Regis nunc sexto predictus Abbas venit et predicti Simon de Hydenye Iohannes Bregel Iustinus Bothel

Note from the Record—*continued.*

Otham in the aforesaid county and drove them from that place to Pevensey that is within the liberty of the Cinque Ports, and there still detain them in park against the law and custom of the King's realm and against the peace etc. And in respect of which the Abbot complaineth that the aforesaid Simon and the others on the Thursday next before the Feast of St. Michael in the third year of the reign of the King that now is the cattle of the aforesaid Abbot, to wit, four horses of the value of four pounds, eight oxen of the value of ten pounds, twelve cows of the value of eight pounds, one bull of the value of twenty shillings, twelve calves of the value of eight pounds, seven and thirty pigs of the value of four pounds at Otham with force and arms did take and them did drive from that place to Pevensey that is within the liberty of the Cinque Ports and them do there still detain in park against the law and custom of the King's realm etc.; whereby he saith that he hath suffered loss and hath damage to the amount of three hundred pounds. And thereof he produceth suit etc.

And the aforesaid Simon and the others come and defend force and wrong when etc. And they say that they are men of the liberty of the Cinque Ports and that they ought not to plead any plea elsewhere than in the Court of Shepway within the aforesaid liberty. And as to this they make *profert* of a charter of the lord King etc. that witnesseth this. And they say that the aforesaid vill of Otham where the said Abbot doth allege that the aforesaid trespass was done to him is within the aforesaid liberty. And they claim their franchise in the matter etc. And the aforesaid Abbot doth say that they ought not to have their franchise in this matter, for he saith that the aforesaid vill of Otham is of the body of the county and is not within the liberty etc. And he asketh that this may be inquired of by the country. And Simon and the others do the like. So a jury is to come thereof *coram Rege* three weeks after Easter wheresoever etc. And who are neither etc. to make recognition etc., because both etc. And for that the said Simon and the others come by exaction they are committed to the Marshalsea. And thereupon come Roger of Beeby, Richard the Blound, Roger of Kent and Thomas of Bradfield of the City of London, Andrew of Birmingham, Richard of Tofts, Robert of Erlham, William the son of John of Newport, Harry of Lakenham, William of Beeston, John of Mundham of the county of Norfolk, John Child and Robert of Foxton of the county of Suffolk, John of Chiddingstone, Edmund of Cornhill of the county of Kent, John of Beneland of the county of Surrey, Richard of Knapton of the county of York, Edmund of Cambridge of the county of Cambridge, John Saleman and Simon atte Hyde of the county of Sussex, Simon of Benington and Adam of Hoveden of the county of Lincoln and Gilbert Apehele of the same county of Lincoln and Richard atte Bergh of the county of Sussex and mainprized the aforesaid Simon and the others, to have them *coram Rege* at the aforesaid term, and so from day to day and term to term etc., to hear the aforesaid inquest etc.

Afterwards on the morrow of All Souls in the sixth year of the reign of the King that now is the aforesaid Abbot cometh, and the aforesaid Simon

Note from the Record—*continued.*

Willelmus Alman Iohannes le Bakere Bartholomaus de Whitedyke Iacobus de Cranle Willelmus atte Berghe Walterus Croup Thomas Chillie et Iohannes Russel de Peuenese per manucapcionem predictam veniunt. Et predicti Martinus Bren Iohannes Molyn Thomas Wigge Simon Litlewatte et Iohannes Lot non veniunt. Ideo manucaptores sui in misericordia. Et predictus Robertus de Bromhamme qui essoniatus fuit de seruicio domini Regis et habuit diem hic ad prefatum crastinum Animarum per essonium suum prout patet per rotulum de essoniis non venit. Ideo predictus Abbas recuperet versus eum viginti solidos per statutum pro expensis etc. Et Iurata versus eum et omnes alios qui modo non veniunt capiatur per eorum defaltam etc. Et Iurata venit. Et super hoc dominus Rex mandauit hic quamdam billam magno sigillo de cancellaria sua signatam in hec verba. Licet in loquela que est coram Rege per breue suum inter Abbatem de Begeham et Simonem de Hydenye Willelmum Aleman et alios in dicto breui contentos de quadam transgressionem eidem Abbati per prefatos Simonem Willelmum et alios illata vt dicitur vsque inquisicionem inde capiendam diu est sic processum ac Iuratores per quos huiusmodi inquisicio capi debuit ad mandatum ipsius Regis ad inquisicionem illam faciendam sepius se optulerint quia tamen capcio inquisicionis illius adhuc restat facienda ad dampnum predicti Abbatis non modicum et grauamen prout idem Rex ex querela ipsius Abbatis accepit vult idem Rex quod ad capcionem inquisicionis predictae cum ea celeritate qua de iure et secundum legem et consuetudinem regni sui fieri poterit procedatur Teste Rege apud Wyndesore .iiij. die Nouembris anno regni sui sexto. Et predictus Abbas petit cum instancia quod procedatur ad inquisicionem capiendam iuxta mandatum domini Regis predictum ex quo Iuratores sunt presentes etc. Et super hoc Aymers de Valencia et Hugo le Despenser tenentes locum domini Regis ex parte ipsius Regis mandauerunt Iusticiariis hic nunciante Henrico Spigornel quod non obstante mandato domini Regis predicto supersedeant de capcione inquisicionis predictae et ponant illam in respectu vsque in Octabas sancti Hillarii vbicunque etc. Ideo idem dies datus est predicto Abbati et prefatis Iuratoribus in Banco Et predicto Simoni et aliis qui modo veniunt etc. per manucapcionem predictam etc. Ad quem diem predictus Abbas venit Et Iustinus Bothel et Thomas Chillie similiter veniunt. Et predicti Simon de Hydenie et omnes alii non veniunt Ideo capiatur Iurata versus eos per eorum defaltam etc. Et Iurata venit Et super hoc dominus Rex mandauit per breue suum quod residet inter precepta istius termini scilicet sancti Hillarii ad ponendam loquelam predictam in respectu vsque a die Pasche in .xv. dies vbicunque etc. Ideo

Note from the Record—*continued.*

of Hydenye, John Bregel, Justin of Bothal, William Alman, John the Baker, Bartholomew of Whitedyke, James of Cranley, William atte Berghe, Walter Croup, Thomas Chilly and John Russell of Pevensey come by their manucaption aforesaid. And the aforesaid Martin Bren, John Molyn, Thomas Wigge, Simon Littlewatte and John Lot do not come. Therefore their manucaptors are in mercy. And the aforesaid Robert of Bromham that was essoined of the service of the lord King and had a day here on the aforesaid morrow of All Souls by his essoin, as appeareth by the roll of essoins, doth not come. So the aforesaid Abbot is to recover twenty shillings against him for expenses under the statute etc.¹ And the jury is to be taken against him and all the others who do not now come by their default etc. And the jury cometh. And upon this the lord King sent a certain bill sealed with the great seal of his Chancery in the words following:—Because that in the action which is before the king, by his writ, between the Abbot of Bayham and Simon of Hydenye, William Aleman and others named in the said writ, of a trespass which it is said hath been done to the same Abbot by the aforesaid Simon, William and the others, there is much delay in taking the inquest, although the jurors by whom an inquisition of this kind ought to be held have frequently offered themselves, on the King's command, to make this inquest, and because, nevertheless, that inquest is still not yet taken, to the no small damage and hurt of the aforesaid Abbot, as the King hath learnt from the complaint of the aforesaid Abbot, the same King willeth that the taking of the aforesaid inquest be had with all the celerity consistent with the law and custom of his Realm. Witness the King at Windsor, the fourth day of November in the sixth year of his reign. And the aforesaid Abbot seeketh with insistence that in accordance with the aforesaid message of the King the taking of the inquest be not delayed, for that the Jurors are present etc. And upon this Aymer of Valence and Hugh the Despenser, that stand in the place of the King by the King's own appointment, sent word to the Justices here through Harry Spigurnel that, the aforesaid message of the lord King notwithstanding, they are not to proceed with the taking of the aforesaid inquest but are to adjourn it till the octaves of St. Hilary, wheresoever etc. So the same day is given to the aforesaid Abbot and to the aforesaid Jurors in Bank, and to the aforesaid Simon and the others who come now etc. by the aforesaid manucaption etc. upon which day the aforesaid Abbot cometh and Justin Bothal and Thomas Chilly come likewise. And the aforesaid Simon of Hydenie and all the others do not come. So the jury is to be taken against them by their default etc. And the jury cometh. And upon this the lord King sent word by his writ, which remaineth amongst the precepts of that term, to wit, of St. Hilary, that the aforesaid action is to be adjourned until the quindenes of Easter, wheresoever etc. So the same day is given to the aforesaid Abbot and

¹ 'If the defendant essoin himself of the King's service and do not bring his warrant at the day given him by the essoin he shall recompense the plaintiff damages for his journey,

twenty shillings, or more, after [the discretion of the Justices, and shall be grievously amerced unto the King.' Statute of Gloucester (6 Edward I), c. viii.

Note from the Record—continued.

datum est idem dies predictis Abbati et Iustino et Thome de Chillie et Iuratoribus predictis in Banco etc. Ad quem diem predictus Abbas venit et Simon et alii non veniunt Et super hoc dominus Rex mandavit hic quamdam aliam billam sigillo suo de Cancellaria signatam que residet inter precepta istius termini Pasche anno etc. sexto ad continuanda omnia placita inter partes predictas vsque ad quindenam Sancti Michaelis proximo futuri in eodem statu quo nunc Ideo datum est dies predicto Abbati a die Sancti Michaelis in .xv. dies vbicunque etc. in eodem statu quo nunc etc.

35. ANON.¹

Detenue de Chartre.

Vn Adam porta soun bref de detenue de vne chartre vers B. et dist qil li bailla vne chartre en la presence etc. en la quele fust contenu qe vn E. enfeffa le dist adam del Maner de P. etc.

Wilbi pur B. defendit et dist qe B. est prest a defendre par la ley qe nul chartre de ly reczeut.

Pass. A ceo nauendront mie car vous receutes la chartre en la presence des plusurs dount le pais puet auer conissaunce et demandoms iugement si vous pusset a la lai auenir Et dautrepart en la chartre est contenu clause de garrauntie qe chiet en le droit pur quei etc.

Berr a *Wilbi*. Veez ceo qil vous dist qil vous bailla vne chartre agarder en la quele est contenu feffement et clause de garauntie volez vous la verement ou noun.

Wilbi. Il nous ne bailla nule chartre prest etc.

Et alii econtra.

36. ANON.²

Desceite.

Vn homme porta soun bref de desceit vers S. etc. et dist qe cum il porta soun bref de droit de vn mies et de xx. carues de terre en ceste court tiel iour etc. la vient le Baillif le Euesqe de Northwich³ et demanda la court soun seigneur de ceo play et pria ke la franchise soun seigneur li fust alowe la quele les auncestres le Roy auent grante a ces predecesours etc. et mist auant la chartre le Roy qe ceo tesmoina et la franchise li fust alowe et certain iour hors de ceins done a W. a quel iour S. se fist essoner de mal deuenu et aiournee ⁴tant qe⁵ a iij. simains apres

¹ Reported by *R*.
with *Y*.

² Reported by *R* and *Y*. Text from *R* collated
³ *Y* adds de Linne.

⁴⁻⁵ iek, *Y*.

Note from the Record—*continued.*

Justin and Thomas of Chillie and to the aforesaid Jurors in Bank etc. Upon which day the aforesaid Abbot cometh, and Simon and the others do not come. And upon this the lord King sent here a certain other bill sealed with his seal of the Chancery, which remaineth amongst the precepts of that same Easter Term in the sixth year etc. directing that all pleas between the aforesaid parties be continued to the quindenes of St. Michael next in the same state in which they now are. So a day is given to the aforesaid Abbot on the quindenes of St. Michael, wheresoever, in the same state in which now etc.

35. ANON.

Detinue of Charter.

One Adam brought his writ of detinue of charter against B. and said that he bailed a charter to B. in the presence of etc., the which charter witnessed that one E. had enfeofed the said Adam of the manor of P. etc.

Willoughby, for B., defended and said that B. is ready to wage his law that he received no charter from Adam.

Passeley. They will not get to that, for you received the charter in the presence of several persons, and of this the jury can have proof; and we ask judgment if you can get to your law. And, besides this, the charter contained a warranty clause, which toucheth the right; wherefore etc.

BEREFORD C.J., to *Willoughby*. Note what he saith to you, that he bailed you a charter to take care of, which contained a feoffment and a warranty clause. Are you willing to aver or not?

Willoughby. Ready to aver that he bailed us no charter.

And the other side joined issue.

36. ANON.

Deceit.

A man brought his writ of deceit against S. etc. and said that when he brought his writ of right in respect of a messuage and twenty carucates of land in this Court upon such a day etc. the bailiff of the Bishop of Norwich came and claimed to have that plea tried in the court of his lord, and prayed that the franchise of his lord, which the ancestors of the King had granted to his predecessors etc., be allowed him, and he tendered the charter of the King in witness thereof, and the franchise was allowed him. A certain day, outside this Court,¹ was given W., upon which day S. had himself essoined by reason of his inability to travel, and he was adjourned to a date three weeks later, upon which

¹ *I.e.* in the court of the Bishop of Norwich.

a quel iour vne protexioun fust mis auant pur S. qe dist ke le Roy li aueint receu en sa protexioun et qil fust quites des touz maneres plees pur ceo qil fust a aler en soun seruice vers escois le quel iour il fust a Seint Botolf scilicet lendemain de Seint Matheu et lendemain vient a sa mesun a linne et demora a lostel pur xv. iours apres encountre la fourme de la protexioun et en desceite du Roy et en tardacion de nostre dreit et a nos damage de lx. li.

S. defendit tort etc. et qantqest encountre la protexioun le Roy et tote manere de deseite al Rey fete et les damages .W. ¹et dist² qil fust atiel iour sauer lendemain de Seint Matheu en la vile de Seint ³Ion en Escoce⁴ en la cumpaignie Ion le fitz marmaduk gardein de la vile et veet issi la lettre qe la tesmoigne.

Berr. A ceste lettre ⁵la court ne durra sa foy⁶ ne de vostre estre cest iour en la vile de Seint Ion en Escoce cum vous dites ceste court ne puet auer conissaunce ⁷pur ceo qe ceo est en Escoce⁸ mes fustes vous a linne le secunde iour apres la feste de Seint Matheu prochein passe auxi cum William vous dist ou noun.

Toud. ⁹Le secunde iour etc. nous ne fumes point¹⁰ la etc.

Et alii econtra.

¹¹Et postea S. inuenit manucaptors ad audiendum personaliter uereditum Inquisicionis etc.¹²

NOTES.¹³

I.¹⁴

Nota qe lessonour¹⁵ des services le Roy couient venir a la barre et estre veu de Court qil soit leal essoynur ¹⁶mes en autre comune essoun hom pout estre essone non curando qe soit essoynur¹⁷ set quidem dicunt qe ceo est la cause par qi le essonor¹⁸ de services le Roy deit estre veu de Cour pur certain persone qe par cas il irreit a la prisone si le reuers feut tesmoynes.¹⁹

II.²⁰

Le noun de essoiaur de services le Roi serra entra en Role qar il irra a la prisone si le reuers fut tesmoigne par le Roi.

¹⁻² etc. et si vous dit, Y. ³⁻⁴ From Y; R has Iouestone. ⁵⁻⁶ ceste courte ne doune nul foy, Y. ⁷⁻⁸ Added from Y. ⁹⁻¹⁰ qe nous ne fumes nient la prist, Y. ¹¹⁻¹² Added from Y. ¹³ Note from B, M, X. ¹⁴ Text of (I) from M collated with B. ¹⁵ lassise, B. ¹⁶ lassise, B. ¹⁶⁻¹⁷ et si puet estre essonee de plusours et in aliis casibus de essonio non est curandum quis sit essoniator, B. ¹⁸ lassise, B. ¹⁹ troue, B. ²⁰ Text of (II) from X.

day a protection was tendered on behalf of S., reciting that the King had received him into his protection, and that he was excused from attendance at all manner of pleas because he had to go to Scotland on the King's service. On that same day, to wit, the morrow of St. Matthew, he was at Boston, and the next day he went to his house at Lynn and tarried at home for a fortnight afterwards, against the form of the protection and in deceit of the King and in delay of our right and to our damage of sixty pounds.

S. denied wrong etc. and all that is alleged in breach of the King's protection and any kind of deceit in respect of the King and damage done to W., and said that upon that day, to wit, the morrow of St. Matthew, he was in the vill of St. John in Scotland, in the company of John the son of Marmaduke, warden of the vill, 'and see here a letter in proof of that.'

BEREFORD C.J. To that letter the Court will attach no weight, nor can this Court certify itself that you were in the vill of St. John in Scotland on that particular day, as you assert, because all that happened in Scotland; but were you in Lynn on the second day after St. Matthew's Day last past, as William saith, or were you not?

Toudeby. The second day etc. we were not there etc.

And the other side joined issue.

And afterwards S. found security that he would hear in person the verdict of the inquisition etc.

NOTES.

I.

Note that an essoinor alleging the King's service must come to the bar and be seen of the Court and satisfy them that he is a loyal essoinor; but in ordinary essoins a man may be essoined without it mattering who the essoinor is. It is said that the reason why an essoinor by reason of the King's service must be identified by the Court is that he will go to prison if it should be proved that the essoinee was not in fact engaged on the King's service.

II.

The name of an essoinor alleging the King's service must be entered on the roll, for he will go to prison if the contrary be shown on behalf of the King.

37. THE EARL OF ARUNDEL *v.* HAKET AND OTHERS.¹

Le counte de Arundel porta soun bref quare vi et armis vers Ihon de la Riuerre et autres qe euz a force et as armes etc. vindrent a Bigenore en sa fraunk chace et illoeqs vn daym pristrent et ses chiens batirent naufrerent etc.

Scroup. Bigenore nest pas en sa fraunk chace prest etc.

Pass. Qi respounetz vous del venir a force et armes et del batterrie des chiens.

Scroup. Nostre excepcion est al bref ²pur ceo fetes vous bon bref.³

Berr. Il ad dit qe Bigenore nest pas en vostre fraunk chace et si ceo est verite il est quites del trespas.

Pass. En nostre fraunk chace prest etc.

Et alii contra.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 184, Sussex.

Edmundus Comes Arundell per Willelmum de Northwyk attornatum suum optulit se .iiij. die uersus Iohannem Haket Iohannem le Clerk de Bygenenere et Robertum atte Mulne de placito quare ipsi simul cum Radulpho Sauntaner vi et armis quendam Damium per canes ipsius Comitis in libera chasea sua apud Bygenenere nuper captum ceperunt et asportauerunt et canes illos ibidem verberauerunt et male tractauerunt et alia enormia etc. ad dampnum ipsius Comitis Centum librarum et contra pacem etc. Et ipsi non veniunt Et preceptum fuit vicecomiti sicut prius quod distringeret predictum Iohannem Haket etc. Et eciam quod caperet alios etc. Et vicecomes modo mandat quod predictus Iohannes Haket districtus est per catalla ad valenciam dimidie marce Et nichilominus Iohannes de Wodesham Iacobus de Puckle Robertus Scot et Willelmus Mandot manuceperunt eum Ideo ipsi in misericordia Et sicut pluries preceptum est vicecomiti quod distringat eum per omnes terras etc. Et quod de exitibus etc. Et quod habeat corpus eius hic in Octabis sancte Trinitatis etc. Et de aliis mandauit quod non sunt inuenti nec aliquid habent in balliua etc. per quod etc. Ideo sicut prius preceptum est vicecomiti quod capiat eos si etc. Et saluo etc. Ita quod habeat corpora eorum hic ad prefatum terminum etc. Et vicecomes sit etc. Ad quem diem vicecomes non misit breue Ideo sicut pluries preceptum est vicecomiti quod distringat predictum Iohannem in forma predicta Et sicut pluries quod capiat alios si etc. Ita quod habeat corpora eorum hic in Crastino Animarum. Et vicecomes sit. Ad quem diem vicecomes non misit breue. Ideo sic pluries predictum est vicecomiti quod distringat predictum Iohannem per omnes terras etc. et sicut pluries quod capiat alios etc. Ita quod habeat corpora eorum hic a die Pasche in .xv. dies Et vicecomes sit etc.

¹ Reported by *M* and *P*. Text from *M*, with which *P* is practically identical.

^{2,3} It seems probable that counsel's name has been dropped out before these words. They have no meaning in *Scrope's* mouth, but might have come aptly enough from *Passeley*. In translating I am presuming that they were in fact spoken by *Passeley*.

37. THE EARL OF ARUNDEL *v.* HAKET AND OTHERS.

The Earl of Arundel brought his writ of *quare vi et armis* against John of the River and others for that with force and arms etc. they did come into his free chase at Bicknor and there did seize a deer and did beat and injure his hounds etc.

Scrope. Bicknor is not within his free chase, ready etc.

Passeley. What do you answer as to the coming with force and arms and as to the battery of the hounds?

Scrope. Our exception is to the writ.

*Passeley.*¹ Then suggest a good writ.

BEREFORD C.J. He hath said that Bicknor is not within your free chase, and, if that be true, he is quit of the trespass.

Passeley. Within our free chase, ready etc.

And the other side joined issue.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 184, Sussex.

Edmund, Earl of Arundel, by William of Northwich, his attorney, offered himself on the fourth day against John Haket, John the clerk of Bicknor and Robert at Mill of a plea why these, together with Ralph Sauntaner, with force and arms a certain deer lately taken by the hounds of the said Earl in his free chase at Bicknor did take and carry away and those hounds did there beat and ill-treat, and other injuries etc., to the damage of the said Earl of a hundred pounds, and against the peace etc. And the defendants do not come. And the sheriff had been commanded as before to distrain the aforesaid John Haket etc. And also to take the others etc. And the sheriff doth now send word that the aforesaid John Haket was distrained by his chattels in the value of half a mark; and nevertheless John of Wodesham, James of Puckle, Robert Scot and William Mandot had mainprized him. So these be in mercy. And *sicut pluries* the sheriff is commanded to distrain John Haket by all his lands etc. And that of the issues etc. And that he is to have his body here on the octaves of the Holy Trinity etc. And touching the other defendants the sheriff sent word that they are not to be found, and that they have naught in the bailiwick etc. by which etc. So the sheriff is commanded as before that he take them if etc., and saving etc., so that he have their bodies here at the aforesaid term etc. And the sheriff is to be etc. On which day the sheriff made no return. So the sheriff is commanded *sicut pluries* to distrain the aforesaid John in the form aforesaid; and, *sicut pluries*, to take the others if etc. so that he have their bodies here on the morrow of All Souls. And the sheriff is to be etc. Upon which day the sheriff made no return. So the sheriff is commanded *sicut pluries* to distrain the aforesaid John by all his lands etc., and, *sicut pluries*, to take the others etc., so that he have their bodies here on the quindenies of Easter. And the sheriff is to be etc.

¹ See note on the opposite page.

38. WARE *v.* ANON.¹

Entre sur la disseisine ou le demaundant autre foitz auoit conu le reuers de soun bref en vn assise sur quel soun bref fut foundu.

Iohan de Ware porta soun bref Dentre vers vn Adam etc. et dit qil nauoit entre si noun par Richard le veneour et Crestiene sa femme qe atort luy disseiserent.

Lamf. Adam vouche a garrauntie Richard et Crestiene etc.

qe vyndrent et garrantirent et disoient qe a cesti bref ne dust il estre resceu qar il dient qe mesmes cesti Iohan deuant ces houres si porta vn assise de nouele disseisine vers mesmes cesti Richard et Crestiene ou il disoient qe mesmes cesti Iohan autrefoize porta vn bref dentre les queux il mesmes les lessa tant qil fust deynz age le quel bref fust contrariaunt al assise par qi nous fumes aiornetz en Baunk ou il disoient mesmes la resoun et Iohan ne put ceo dedire et demande luy fust sil fust vnqes puis seisi et il dit qe noun par qi agarde fust qil prist rien par lassise et desicom ceo bref est foundu sur la disseisine Iugement si a tiel bref deit estre resceu sil ne pout moustre etc.

Scrop. Donques voilletz vous dire qe nous vsames autrefoize bref de plus haut nature et ceo auoms conu si vous voilletz ²ceo dire la conisaunce nous ne deit plus greuer³ qe le vser du bref mes le vser⁴ ne nous deit greuer qar nous fumes noun sewy.

Ing. Il ne mette pas auant la excepcion com vous dites mes dit pur ceo qe vous auetz vsee bref qe suppose qil auoient entre par vostre lesse et Iugement⁵ si tailla qe vous ne pristez rien par lassise le quel iugement esta vnqore en sa force et desicom lassise fut abatu par iugement vous ne poetz cesti bref vseer qest fondu sur mesme la cause.

Scrop. Donques voilletz qe nous conissoms etc. dietz cela et nous respoundroms assetz.

Ber. Pernetz cel respounse com il dit qe iugement se fist sur vostre conisaunce qe vous ne pristez rien par lassise et vostre conisaunce put estre si large qil vous grauntera.

¹ Reported by *B* and *Q*. Text from *Q* collated with *B*.
saunce nous ne deuoms pluys greuere, *B*.

⁴ vsage, *B*.

²⁻³ dedire la Conis-
⁵ Ingham, *B*.

38. WARE *v.* ANON.

Entry *sur disseisine*, where it was said that the claimant had made admissions in a previous writ which were inconsistent with his allegations in a subsequent assize, upon which allegations his present writ was founded.

John of Ware brought his writ of entry against one Adam etc. and said that Adam had no entry except by Richard the Veneour and Christian his wife that had wrongfully disseised him.

Laufer. Adam voucheth to warranty Richard and Christian etc.

And these came and warranted and said that John ought not to be received to this writ, for they say that this same John afore now brought an assize of novel disseisin against these same Richard and Christian, in answer to which they said that this same John had afore then brought a writ of entry against them in respect of tenements which he himself had leased to them while he was within age, which writ was in contradiction of the assize; and we were, in consequence, adjourned into Bank, where they¹ made the same allegation, and John could not deny it. And he was asked if he had ever had a later seisin, and he said that he had not. Wherefore judgment was given that he should take naught by the assize. And since this [present] writ is founded upon disseisin, [we ask] judgment whether he should be received to such a writ unless he can show etc.

Scrope. Do you want to say, then, that we have previously used a writ of higher nature and have admitted this²? If you want to say that, [then we say] that the admission should not prejudice us more than the use of the writ. But the use of the writ ought not to prejudice us, for we were non-suited.

Ingham. He doth not take the exception as you say, but he saith that because you have used a writ that supposeth that they had entry by your lease, and since judgment was given that you should take naught by the assize, which judgment is still effective, and since the assize was abated by judgment, you cannot use this writ, which is based upon the same facts.

Scrope. Then will you say that we admitted etc.; say so, and we will give you sufficient answer.

BEREFORD C.J. Take this answer as he saith it, that, upon your own admissions, judgment was given that you should take naught by the assize; and it may be that your admissions were as conclusive as he doth say.

¹ These changes of person follow the original.

² *Qy.* that he had subsequent seisin.

Scrop. Cest vn bref dentre qest mixte en le dreyt et avoms dist qe mesmes launcestre¹ fut seisi en soun demesne com de fee et de dreit de luy desendi le dreit a nous com a fitz iugement si vous nous puissetz ouster de cesti bref.

Lamf. Conissetz sil² auoit cele record ou noun.

Scrop. Vostre respounse est double qe vous dites qe autrefoize nous portames vne bref Dentre ou nous supposames qil auoit entre par nostre les et puis vous dites qe iugement se fist qe nous ne primes rien par lassise et issynt vous bietz auer auantage par lour respounse qe nostre conissaunce la qel est contrariaunt a nostre bref et par lautre vous nous bietz ouster de cesti bref pur ceo qe lassise est abatu et pur ceo tenetz vous a lun ou a lautre.

Ber. a Lamf. Vostre respounse namounte a nyent plus fors qe autrefoize il porta vn bref dentre dont il suppose qil auoit entre par soun lees tant com il fust deynz age qest contrariaunt etc. qe vous dites qe vous ne voilletz autre chose dire par qi il ne faut fors vn parole qe vous estes noun defendu.

Lamf. Nous ne luy disseisimes poynt etc.

39. GRUNSARD v. ROUS.³

Nota bref fut porte vers vne Alice.

Lauf. Coment qele est nome Alice ele ad a noun Deonise et vous dit qele nad rien en les tenemenz si noun ioyntement oue vn William soun fiz nient nome en bref iugement du bref et mist auant vne chartre qe testmoigne qe les tenemenz furent donez a Deonise et a William soun fitz etc.

Hut. Cel vers qi nous portames nostre bref ad a noun Alice et conu par cel noun.

Lauf. Est ele conu Alice mez soun dreyt noun est Dionise et conu Dionise et pur cel noun Dionise ele purchasa ceux tenemenz oue William soun fitz iugement etc.

Berr. Il poet qele fut Baptise Dyonise et pus conferme Alice vel e contrario et le noun qe le Euesqe la dona ceo serra sa dreyt noun.

Hut. Cel vers qi nous portames nostre bref ad a noun Alice et conu et nient Dyonise et nad nul fitz William prest etc.

Berr. Est ceo resceyuable quasi diceret non.

¹ Nostre auncestre, *B.* ² *B* omits conissetz. ³ Reported by *T.*⁶⁷¹ Names of the parties from the Record.

Scrope. This is a writ of entry that is mixed in the right, and we have said that our ancestor was seised in his demesne as of fee and right. From him the right descended to us as his son. Judgment whether you can drive us from this writ.

Laufer. Admit whether there be such a record or deny it.

Scrope. Your reply is double, for you say that at other time we brought a writ of entry whereby we alleged that Adam had entered by our lease; and then you say that judgment was given that we should take naught by the assize; and so by your¹ answer you want to advantage yourselves on the one hand by the allegation that our admission is opposed to our writ, and, on the other, by driving us from this writ on the ground that the assize was abated. Therefore abide by one or the other.

BEREFORD C.J., to *Laufer.* Your answer amounts to naught more than that at other time John brought a writ of entry, wherein he supposed that Adam had entered by his lease, made while he was within age, which is opposed etc., and since you say that you will not make other answer you are within an ace of making no defence at all.

Laufer. We did not disseise him etc.

39. GRUNSARD *v.* ROUS.

Note of a writ brought against one Alice.

Laufer. Though she is named Alice [in the writ], her name is Denise; and she telleth you that she hath naught in the tenements save jointly with one William, her son, who is not named in the writ. Judgment of the writ—and he tendered a charter which witnessed that the tenements were given to Denise and to William, her son.

Huntingdon. The name of her against whom we bring our writ is Alice, and she is known as Alice.

Laufer. She is known as Alice, but her right name is Denise, and she is known as Denise; and in this name Denise she, together with William her son, purchased these tenements. Judgment etc.

BEREFORD C.J. It may be that she was christened Denise and afterwards received the name Alice in Confirmation, or *vice versa*, and the name which the Bishop gave her will be her right name.

Huntingdon. The name of her against whom we brought our writ was Alice, and she was so known, and not as Denise; and she had no son William. Ready etc.

BEREFORD C.J. Is that [averment] receivable?—inferring that it was not.

¹ Literally *their*; another muddle of the persons.

Hut. Qele ad noun Alice et conu Alice et nient Dyonise prest etc.

Lauf. Qe soun dreyt noun est Dyonise et conu Dyonise tut seit este conu Alice prest etc.

Berr. Vous estes a vn de la persone qe ceo est mesme ceste mes vous variez del noun.

Et stetit verificacio etc.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 29d., Northamptonshire.

Thomas filius Alicie Grunsard petit versus Philippum le Rous et Dulciam sororem eius vnam acram terre cum pertinenciis in Hegham Ferrers vt Ius etc. per breue de Ingressu etc.

Et Philippus et Dulcia per Iohannem de Stoke attornatum suum veniunt Et dicunt quod non debent ei inde ad hoc breue respondere quia dicunt quod vbi predictus Thomas per breue suum nominat predictam Dulciam et ipsa non vocatur Dulcia immo Alicia Et petit iudicium de breui etc.

Et Thomas dicit quod ipsa vocatur Dulcia et tali nomine cognoscitur in patria Et hoc petit quod inquiratur per patriam. Et Philippus et Dulcia similiter. Ideo preceptum est vicecomiti quod venire faciat hic in Octabis sancte Trinitatis xij. etc. per quos etc. Et qui nec etc. Ad recognizandum etc. Quia tam etc.

40. ANON.¹

De computo de tempore quo fuit ballius ou il assigna en countaunt et qant al vn tenps il fut rebote hoc non obstante il fust chace a respoundre a lautre tenps Et sic nota le bref se abaty en partie et en partie estut.

Vn A. porta son bref dacompt vers B. et counta qe par la ou il fut son bailiff de son maner de O. de la feste de seint Michel lan .xxxiiij. tant qe a la Pasqe procheyn ensiwant et de le seint Michel lan .xxxv. tant qe a la seint Iohan procheyn ensiwant.

Scrop. Qant a primer tenps nient son baillif prest etc. et qant a lautre nous conussoms bien estre son baillif mes nous vous dioms qil mesme nous assigna et establi son bailliff de O. saunz acompt rendre iugement etc. Si encountre son fet demesne puisse de nous acompt demander.

Denom. Sire par ceo fet ne nous put il barrer qar le fet fut fait auant le tenps qil fut nostre baillif et demandoms iugement del houre

¹ Reported by P.

Huntingdon. That her name was Alice and that she was known as Alice, and not as Denise, ready etc.

Laufer. That her right name is Denise and that she is known as Denise, though she may have been known as Alice, ready etc.

BEREFORD C.J. You are at one as to the identity of the person, but you differ as to her name.

And the averment stood etc.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 29d., Northamptonshire.

Thomas the son of Alice Grunsard claimeth from Philip the Rous and Dulcia his sister one acre of land with the appurtenances in Higham Ferrars as the right etc. by a writ of entry.

And Philip and Dulcia come by John of Stoke, their attorney, and they say that they ought not to answer the plaintiff thereof upon this writ, for they say that whereas the aforesaid Thomas nameth the aforesaid Dulcia in his writ, her name is not Dulcia but Alice. And he asketh judgment of the writ etc.

And Thomas saith that she is called Dulcia and is known by that name in the neighbourhood. And he asketh that this be inquired of by the country. And Philip and Dulcia do likewise. So the sheriff is commanded to make come here in the octaves of the Holy Trinity twelve etc. by whom etc., and who are neither etc. to make recognition etc. ; because both etc.

40. ANON.

A writ of account for the time when the defendant was the plaintiff's bailiff. In his counting the plaintiff laid two periods of time. As to one of these he was rebutted, but, notwithstanding this, the defendant was driven to put in an answer as to the other period ; and so it is to be noted that the writ was abated in part and in part stood.

One A. brought his writ of account against B. and counted that B. was his bailiff for his manor of O. from the Feast of St. Michael in the thirty-third year [of King Edward I.] until the Easter next following, and from the Feast of St. Michael in the thirty-fifth year until St. John's Day next following.

Scope. As to the former period, not his bailiff, ready etc. ; and, as to the other, we freely admit that we were his bailiff, but we tell you that he himself appointed and installed us as his bailiff of O. without any liability that we should render him an account. Judgment etc. whether against his own deed he can claim an account from us.

Denham. Sir, he cannot bar us by this deed, for the deed was made before the time when he was our bailiff ; and, since he hath

qil ad conu qil auoit administracion de nos biens vt supra si par my cel fet auant qil auoit administracion etc. le puisse del counte descharger.

Et pur ceo qil counte le fet si fut agarde qe qant al temps qil ne prist rien par son bref mes autre serreit si la partie vst mis auant vn reles et quiteclame.

Denom. Qi responetz al dereyn temps.

Scrop. Vostre counte est vn en ly mesme et sur quel counte vous auez arrame vos damages et del heure qe vostre counte et bref est abatu en partie en taunt com vous auez demande acompt encountre vostre fet iugement sil ne deit abatre en tut.

Et non fuit allocata et pus tendi auerement qe nient son baillif.

41. COKELYN AND RUSSELL *v.* WODHULL.¹

De computo.

Vn homme porta son bref dacompt de tempore quo fuit balliuus etc. et counta par la ou il fust son baillif en N. de la feste de seint Michel lan terce tant qe a mesme la fest lan .v. et pur ceo qe le bref fust purchase .xv. iors auant la seint Michel lan .v. et issi en le tensps qil fust son baillif auant qel tensps accion ne ly poeit acrestre le bref sabati etc.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 38d., Northamptonshire.

Adam de Wodhull attachiatus fuit per corpus ad respondendum Thome Cokelyn et Willelmo Russel de placito quod reddat eis resonabilem compotum suum de tempore quo fuit receptor denariorum ipsorum Thome et Willelmi etc. Et vnde iidem Thomas et Willelmus per attornatum suum Dicunt quod cum predictus Adam extitisset receptor denariorum ipsorum Thome et Willelmi a festo sancti Michaelis anno regni Regis nunc quarto apud Northampton vsque ad idem festum sancti Michaelis proximo sequens recipiendo per idem tempus quinquaginta libras scilicet qualibet septimana viginti solidos de panibus ipsorum Thome et Willelmi per ipsum Adam venditis predictus Adam compotum suum predictum eisdem Thome et Willelmo nondum reddidit set semper hucusque reddere contradixit et ad huc contradicit etc. vnde dicunt quod deteriorati sunt et dampnum habent ad valenciam sexaginta librarum et inde producunt sectam etc.

¹ Reported by *P.* Names of the parties from the Record.

admitted that he hath had administration of our goods as above, we ask judgment whether by this deed, made before he had administration etc., he can discharge himself of rendering an account to us.

And because the plaintiff had counted of the deed it was adjudged that he should take naught by his writ in respect of the [former] period, though it would have been otherwise if a release and quitclaim had been tendered by the defendant.

Denham. What do you answer as to the latter period ?

Scrope. Your counting is all one whole, and on that counting you have claimed your damages ; and, seeing that your counting and your writ are in part abated by reason of your having claimed an account against your own deed, judgment whether it ought not to be abated altogether.

This was not allowed, and then he offered to aver that B. was not the bailiff of A.

41. COKELYN AND RUSSELL *v.* WODHULL.

Of account.

A man brought his writ of account of the time the defendant was his bailiff etc., and counted that he was his bailiff in N. from the Feast of St. Michael in the third year until the same Feast in the fifth year ; and because the writ was purchased a fortnight before Michaelmas in the fifth year, and so within the time when the defendant was still bailiff, before the expiration of which time action could not accrue, the writ was abated etc.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 38d., Northamptonshire.

Adam of Wodhull was attached by his body to answer Thomas Cokelyn and William Russell of a plea that he render them his reasonable account of the time during which he was the receiver of the moneys of the same Thomas and William etc. And touching this the same Thomas and William do say by their attorney that although the aforesaid Adam was receiver of the moneys of the same Thomas and William at Northampton from the Feast of St. Michael in the fourth year of the King that now is to the same Feast of St. Michael next following, receiving during that same time fifty pounds, to wit, twenty shillings in every week, from the sale by him, the said Adam, of the loaves of the same Thomas and William, the aforesaid Adam hath not yet rendered his aforesaid reasonable account to the same Thomas and William, but hath hitherto always refused to render it, and still doth refuse etc. ; whereby they say that they have suffered loss and are endamaged in the sum of sixty pounds, and thereof they produce suit etc.

Note from the Record—continued.

Et Adam venit et defendit vim et iniuriam quando etc. Et petit auditum brevis cuius data est decimo die Septembris anno regni Regis nunc quinto etc. et idem Adam dicit quod non debet ei[s] inde ad hoc breue respondere quia dicit quod ex quo predicti Thomas et Willelmus per narracionem suam supponunt ipsum Adam extitisse receptorem denariorum ipsorum Thome et Willelmi per totum annum predictum infra quod tempus predicti Thomas et Willelmus breue suum predictum versus ipsum Adam perquisierunt prout per datam predicti brevis liquet manifeste petit iudicium etc. Et Thomas et Willelmus non possunt hoc dedicere. Ideo predictus Adam inde sine die Et predicti Thomas et Willelmus nichil capiant per breue istud set sint in misericordia pro falso clamore etc.

42. THE ABBOT OF HOLLAND *v.* RANAUEL.¹I.²

De medio ou le defendant graunta et conferma touz les terris [*sic*] et tenementz qe vne Vyane dona al predecessor cesti Abbe qe fust pleintif et obliga lui et ses heirs a la quitance et a la garrantie et cesti Abbe tint de Vyane en pur [almoigne] et en perpetuite etc. ou il couient qe ceux services tut iors demurgunt en le sank etc.

Labbe de houlond³ port son bref de meen vers Robert de Ranauel⁴ et dit qe atort ne ly acquite des services qe Martin⁵ luy demande etc. et pur ceo atort qe la ou il tient de luy en pure et perpetuele almoigne certeyns tenementz la demande le dit Martin⁶ homage et seute a sa court de bachosale⁷ de .iij. semaynes etc. et a ceo fere etc.

Frisk. defendit et demanda qil auoit de la quitaunce etc.

Labbe mist auant vn escrit et dit qe cesti Robert granta et conferma etc. toutes les terres et les tenementz qe vne viane douna a vn Abbe H. predecessour etc. et a ses successors et obliga luy et ces heys a la quitaunce etc. et a la garrauntie.

Frisk. Cesti Abbe fit de gre les services a T. de Canull⁸ et a⁹ ¹⁰sa femme¹¹ miere mesme cesti Martin¹² qore ly¹³ destreynt etc. qi heyr etc. de queux services il prie ore la quitaunce iugement etc. si nous le deuoms aquitter etc.

Toud. Est ceo vostre fet ou noun.

¹ Reported by *B*, *L*, *P*, *Q*, and *X*. ² Text of (I) from *P* collated with *B*, *L*, and *Q*. Headnote from *B*. The note in *Q* is:—De medio ou vn estraunge fut oblige a lacquitaunce reseruauant a ly les services scilicet pater nostres et aues les queux tenementz furent donez en perpetuel almone.

³ Hertelond, *B*;

Hertelon, *Q*. ⁴ amiel, *B*; Beauuel, *Q*.

⁵ vn W., *B*.

⁶ William, *B*, *Q*.

⁷ Bekesale, *B*; Boksale, *Q*.

⁸ Chauncel, *L*; Cauuyle, *Q*.

⁹ A., *L*.

¹⁰⁻¹¹ la, *B*.

¹² W., *B*.

¹³ *B* omits.

Note from the Record—continued.

And Adam cometh and doth defend force and injury when etc. And he prayeth *oyer* of the writ, which is dated the tenth day of September in the fifth year of the present King etc.; and the same Adam saith that he ought not to answer them of this writ, for he saith that the aforesaid Thomas and William do suppose by their counting that he, Adam, was the receiver of the moneys of the same Thomas and William during the whole of the year aforesaid, within which period of time the aforesaid Thomas and William did purchase their aforesaid writ against him, Adam, as doth plainly appear by the date of the aforesaid writ, and thereof he asketh judgment etc. And Thomas and William cannot deny this. So the aforesaid Adam is to go away without day, and the aforesaid Thomas and William are to take naught by that writ, but are to be in mercy for their false claim etc.

42. THE ABBOT OF HOLLAND *v.* RANUEL.

I.

Writ of mesne, where the defendant granted and confirmed all the lands and tenements which one Viane gave to the predecessor of the Abbot that was plaintiff, and bound herself and her heirs to acquittal and warranty. This Abbot held of Viane in pure and perpetual alms; and it was contended that those services always continue in the blood of the donor.

The Abbot of Holland¹ bringeth his writ of mesne against Robert of Ranauel and saith that he doth wrongfully fail to acquit him of the services which Martin claimeth of him etc.; and wrongfully because, though he holdeth of him certain tenements in pure and perpetual alms, the said Martin doth claim homage and suit at his Court at Becconsall² every three weeks, and there to do etc.

Friskency defended and asked what the Abbot had in proof of the acquittal.

The Abbot tendered a writing, and he said that this Robert did grant and confirm etc. all the lands and tenements which one Viane gave to one Abbot H., predecessor etc., and to his successors, and did bind himself and his heirs to the acquittal and the warranty.

Friskency. This Abbot willingly rendered the services to T. of Canull and to his wife, mother of this same Martin, whose heir etc. that doth now distrain him etc., of which services the Abbot doth now pray to be acquitted. Judgment etc. if we are bound to acquit him.

Toudeby. Is this your deed or not?

¹ Or, possibly, of Hartland in Devonshire. See the variants given in the footnote on the opposite page. The *Priory* of Holland was in Lancashire.

² Becconsall is a village, near Ormskirk, in Lancashire.

Frisk. graunta le fet et dit coment qe le fet dit qe nous ly deusoms acquitter les tenementz qe viane etc. sire viane est tout estraunge a nous et rien priue par qi nentendoms mye qe nul fet sur cel doun nous puisse lier a la quittaunce.

Toud. Nous vous dioms qe viane fut tenaunt¹ du maner de C. enterment et dona ceux tenementz del maner etc. al Labbe et le Couent etc. illoeques dieu seruauntz en pure etc. et apres la mort viane entra vn Gilbert son fitz en le maner en le qel ceux tenementz sunt et enfeffa cesti Robert a tenir de chief seignourage de fee en qel temps il nous fit ceo fet et confermement² le doun viane a tener de luy auxi com nous feymes de viane iugement etc.

Scrop. Par queux seruices.

Toud. Par pater noster et aue maries.

Berr. Vous pledez dune part et eux dautre part et nient a vn.

Scrop. Il bient dereigner ceste acquitaunce vers nous et acquitaunce gist naturelment entre seignour et tenant et seignourie en nostre persoune ne pount il attacher qar il ount counte³ qe viane ⁴dona a tenir de luy etc. par qi⁵ saunz ceo qe il moustre qe seit attourne a nous ou en court ou hors etc. vngore demoert il⁶ le tenaunt viane ⁷ou ces heyr⁸ et demandoms iugement si autrui tenaunt deuoms acquiter desicom acquitaunce gist entre seignour et tenaunt.

Herle. Quoi respounetz vous au fait.

Scrop. Nous nauoms mestre a respoundre au fet en cesti bref de acquittaunce.

Et postea habuit diem per preceptum in Octabis Sancti Michaelis ad quem diem——

Herle ⁹le priast qe les¹⁰ acquitast vt prius.

Scrop. Vostre counte et vostre especialte sount descordaunt qar vostre bref et vostre counte supposent qe vous estes nostre tenaunt et lespecialte voet qe viane dona les tenementz en pure et perpetuel almoigne et nous sumes estraunge a viane et a ces heyr⁸ et frank almoigne est de tiel nature qil ne poet iames attourner de son feffour ne de ces heyr⁸ iugement de puy⁸ qe nous sumes estraunge si de estraunge doun deuoms acquitaunce faire.

Toudeby. Si ieo purchace¹¹ tenementz a tenir de chief seignourage ¹²de fee¹³ et vous obligez vous et vos heyr⁸ a la garrauntie et ieo soi enplede ieo porteroy mon bref de garrauntie de Chartre de vers

¹ Dame, *B.* ² enconfermaunt, *B, L, Q.* ³ conu, *B, L, Q.* ⁴⁻⁵ lour enfeffa et qe nous purchaceames le Manoir etc. a qi etc. del hure Vyane et, *B.*
⁶ labbe, *B.* ⁷⁻⁸ *B* omits. ⁹⁻¹⁰ lour priast qe il lour, *B.* ¹¹ *B* adds de vous.
¹²⁻¹³ From *L.* The other texts have etc.

Friskenev admitted the deed and said : Although the deed saith that we are bound to acquit him in respect of the tenements which Viane etc., Viane, Sir, is wholly a stranger to us and in no way privy ; and therefore we do not think that any deed made upon this gift can bind us to acquittal.

Toudeby. We tell you that Viane held the manor of C. absolutely and gave these tenements belonging to the manor etc. to the Abbot and Convent etc., there serving God, in pure etc. ; and after the death of Viane one Gilbert, her son, entered upon the manor in which these tenements are and enfeoffed this Robert to hold of the chief lords of the fee, at which same time he made us this deed and confirmation of the gift of Viane, by which we were to hold of him as we did of Viane. Judgment etc.

Scrope. By what services ?

Toudeby. By *pater nosters* and *ave Maries*.

BEREFORD C.J. You are pleading about one thing and they are pleading about another, and you are not on the same issue.

Scrope. They want to prove that we are bound to acquit them, and plea of acquittal lieth by its nature between lord and tenant. They cannot attach any lordship to us, for they have counted that Viane gave [them the tenements] to hold of her etc. ; wherefore unless he show that he attorned himself to us either in Court or outside etc., he yet remaineth the tenant of Viane or her heirs ; and we ask judgment whether we are bound to acquit the tenant of other folk, seeing that acquittal, by its nature, lieth between lord and tenant.

Herle. What do you answer to the deed ?

Scrope. In this writ of acquittal we are not called upon to answer to the deed.

And afterwards he had a day by precept in the octaves of St. Michael, upon which day——

Herle prayed that he should acquit them, as before.

Scrope. Your counting and your specialty are in disagreement, for while your writ and your counting suppose that you are our tenant, the specialty supposeth that Viane gave the tenements in pure and perpetual alms ; and we are strangers to Viane and to her heirs, and free alms is of such a nature that attornment cannot be made in respect of it to the feoffor or to his heirs. Judgment whether, since we are strangers, we are bound to make acquittal in respect of the gift of a stranger.

Toudeby. If I purchase tenements to hold of the chief lords of the fee, and you bind yourselves and your heirs to warranty and I be empleaded, I shall have my writ of warranty of charter against

vous et mon bref dirra que de eo tenet et ieo ne tienk ¹rien de vous.²

Denom. Ieo vous ³respoigne a cele parole quam de eo clamat tenere⁴ clame nest pas pledable etc. par qi ⁵il ne sunt mye semblables.⁶

Hui. Emparlez et mettez ⁷vostre respouns⁸ ou vous voilez estre.

Denom. Il demandent ceste acquitaunce de vers nous par resoun dun escript qe dit qe nous auoms conferme le doun la dite viane en fraunk almoigne les queux seruices sunt issint⁹ estables¹⁰ a viane¹¹ et a ces heyrz qil ne pount iames vestier en autre persoune estraunge par nule manere de atournement et il poet dereigner la quitaunce vers le heyr viane par la resoun qe les seruices sunt regardaunz a eux et a nul autre iugement etc.

Hui. Le fait voet qe vous grauntastes ¹²et confermastes¹³ le doun viane com cely qe ad purchace la seignourie qe fut a viane et a ceo vous auez oblige vous et vos heyrz a la quitaunce pur estre en lour orisouns et auer les biens fettes de la meson et ieo ne voy ¹⁴coment il poet autrement¹⁵ estre attourne qe par seisine des seruices etc. par qi a ceste matere ne say¹⁶ ieo plus dire mes dites vostre resoun et ¹⁷le froms entre¹⁸ en Roulle et dirroms¹⁹ outre.

Herle. Nous vous dioms qe Robert est chief seignour du fee et est resceu en lour orisouns²⁰ et en autres bienfaitz de la meson et issint seisi de nos seruices qe sunt espirituals pur les queux il par sa Chartre obliga ly et ces heyrz a laquitaunce iugement etc.

Denom. Vt supra.

Dies datus in Octabis Sancti Hillarii ad quem diem——

Scrop. Cest vn bref de meen et ne gist pas naturelment fors entre seignour et tenaunt et nous vous dioms qe Labbe ne tient rien de nous ne nous ne sumes pas meen entre luy et Martin²¹ iugement ²²du counte.²³

Herle. Vostre fait testmoigne qe vous nous deuez acquiter etc. le qel fait voet qe vous grauntastes et confermastes etc. et quiteclamastes etc. touz les mesons²⁴ terres Rentes ²⁵ou seignuries²⁶ qe de Martin²⁷ furent tenuz en chief en .ij. villes les queux Labbe etc. predecessour etc. auoit de doun vne viane de Bole²⁸ etc. reseruaunt a luy les bienfites des oreisons²⁹ a auer et tenir a luy etc. en fraunk et pure et perpetuel almoigne et demandoms iugement de sicom son fait demesne suppose qil reserua³⁰ a luy partie des seruices etc. et oue ceo par mye ceo

¹⁻² pas de luy prest etc. *Q.* *B* is similar. ³⁻⁴ *From the other texts.* *P.* has resigne ceste parole qe de eo tenet clame. ⁵⁻⁶ vostre respouns ne lye mye, *B.* ⁷⁻⁸ *B* omits. ⁹ *L* omits. ¹⁰ alienes, *B, Q.* ¹¹ Will., *B.* ¹²⁻¹³ Added from *B.* ¹⁴⁻¹⁵ qi purra meuz, *B, Q.* ¹⁶ sage, *Q.* ¹⁷⁻¹⁸ nous lentroms, *B.* ¹⁹ *B* adds ior. ²⁰ mesons, *B.* ²¹ *B* and *Q* have *W.* ²²⁻²³ From *B* and *Q*; etc. *P.* ²⁴ mees, *B, Q.* ²⁵⁻²⁶ Added from *B, Q.* ²⁶⁻²⁷ qe labbe auoit ou de luy, *B, Q.* ²⁸ Hole, *B, Q.* ²⁹ mesouns, *B, L.* ³⁰ releassa, *B.*

you, and my writ will say *que de eo tenet*, and yet I hold naught of you.

Denham. In respect of the words *quam de eo clamat tenere* my answer to you is that they are not pleadable words ; and so the cases are not similar.

STANTON J. Imparl and settle your answer as you want it to stand.

Denham. They are claiming this acquittal against us in virtue of a writing which saith that we have confirmed the gift of the said Viane in free alms ; but the services are so established in Viane and her heirs that they can never vest in any stranger by any kind of attornment ; and the Abbot can prove his right to the acquittal against the heir of Viane on the ground that the services are regardant to them and to none other. Judgment etc.

STANTON J. The deed saith that you granted and confirmed the gift of Viane as the purchaser of the lordship which had belonged to Viane ; and by it you have bound yourself and your heirs to the acquittal in consideration of being mentioned in the Convent's prayers and of receiving the good offices of the house, and I do not see how Robert could have other attornment than seisin of the services etc. ; and so I do not know that I have aught further to add on this matter, but argue your case and we will have the arguments entered on the roll, and we will say more later.

Herle. We tell you that Robert is chief lord of the fee and has the benefit of their prayers and the other good offices of the house, and so he is seised of our services, which are spiritual, in consideration of which he bound himself and his heirs by his charter to the acquittal. Judgment etc.

Denham as above.

A day is given in the octaves of St. Hilary, upon which day——

Scrope. This is a writ of mesne and it lieth naturally only between lord and tenant, and we tell you that the Abbot holdeth naught of us, and that we are not mesne between him and Martin. Judgment of the counting.

Herle. Your deed witnesseth that you ought to acquit us etc., the which deed saith that you did grant and confirm etc. and did quitclaim etc. all the houses, lands, rents or lordships which were held by Martin in chief in two villis, the which the Abbot etc. predecessor etc. had by the gift of one Viane of Bole etc., reserving to Martin the benefits of prayers, to have and to hold to him etc. in free and pure and perpetual alms ; and, since his own deed reciteth that he reserved to himself parcel of the services etc., we ask judgment whether he be not conse-

il est oblige a laquitaunce iugement et demandoms si ceo soit son fait.

Scrop. Nous ne pledoms pas au fait mes tot a counte qe vous auez counte qe vous tenez de nous et nous vous dioms qe vous ne vos predecessours¹ ne tindrent vnqes² de nous ne nous³ ne poems estre vostre seignour qar vne viane de Bole dona ceux tenementz a vous⁴ etc. a tenir de ly et de ces heys en fraunk almoigne par qi la seignourie deit estre contenue en la saunk viane⁵ etc. et par qi impossible est qe nous seoms vostre seignour si vous ne puissez dire qe nous purchasoms la seignourie de viane⁶ ou de ces heys et qe vous estes attourne etc. qar de vn tenaunce homme ne poet auer .ij. seignours inmediate.⁷

Herle. Vostre fet voet qe vous nous deuez acquiter etc.

Scrop. Vous dites qe Martin⁸ vous demande homage⁹ et escuage¹⁰ et de ceo vous demandez lacquitaunce et il ne vous poet acquiter del homage si il ne seit vostre seignour etc.

Herle. Nous auoms qantqe apent a la quitaunce qe son fet voet qe nous tenoms de luy et fumes¹¹ par le fait et il ad reserue a luy bienfite de orisouns et priers.

Scrop. Le fet ne proue qe nous sumes vostre seignour qe par moun fet demesne ieo ne puisse iames purchacer autrui seignourie et vous tenez de viane et de ces heys etc. et voloms auerer qe vous ne tenez pas de nous ne vnqes ne nous fettes service etc.

Herle. Vous ne deuez estre ressu al auerement encoutre vostre fait demesne qe testmoigne qe nous tenoms de vous en pure et perpetuel almoigne et qe vous nous deuez acquiter encontre touz gentz etc.

Scrop. Lauerement qe ieo tende¹² nest pas encontre le fait qar ieo tenk dauerer qe vous ne tenez pas de nous ne vnqes ne tenistes etc.

Et habuit diem in mensem Pasche.

¹³*Scrop.* vt supra.

Et pur ceo qe lauaundit R. conust soun fet par leuel il graunta et conferma al auaundit Abbe les tenementz auaunditz com ceux qe furent de soun fee a tenir etc. reseruaunt a ly mesmes beneficia scilicet orisouns etc. et graunta par le fet pur lier ses heirs qil acquiterait labbe uers totes gentz agarde fut qil acquitast lauaundit Abbe et ses successors a touz iors de les auaunditz services et qe labbe recouere ses damages qe sunt taxes etc. et R. en la mercy et preceptum vicecomiti etc.¹⁴

¹⁻² etc. issi, *Q*. ³ vnqore, *L*. [⁴ From the other texts. *P* has nous. ⁵⁻⁶ *B* omits. ⁷ mediate, *B*. *B* and *Q* add etc. ⁸ *B* and *Q* have William for Martin. ⁹⁻¹⁰ Added from *B*. ¹¹ feymes, *B*, *Q*; foms, *L*. All the texts seem corrupt. I suggest that for et fumes we should read en almoigne. ¹² tenk, *B*, *L*. ¹³⁻¹⁴ Added from *Q*; *B*, *L*, and *P* omit.

quently bound to the acquittal, and we ask judgment whether this be his deed.

Scrope. We are not pleading to the deed but solely to the counting which you have counted, [namely] that you hold of us, and we tell you that neither you nor your predecessors ever held aught of us; nor can we be your lord, for one Viane of Bole gave those tenements to you to hold of her and of her heirs in free alms, and therefore the lordship must be continued in the blood of Viane etc., and therefore it is impossible that we can be your lord unless you can say that we purchased the lordship of Viane or of her heirs and that you attorned etc., for a man cannot have two immediate lords of one tenancy.

Herle. Your deed supposeth that you are bound to acquit us etc.

Scrope. You say that Martin claimeth homage and escuage of you, and you ask to be acquitted of that, but the defendant cannot acquit you of that unless he be your lord etc.

Herle. We have quite sufficient to entitle us to the acquittal, for his deed supposeth that we hold of him in pure alms¹ by the deed, and he hath reserved to himself the benefit of orisons and prayers.

Scrope. The deed doth not prove that we are your lord, for by my own deed I can never purchase the lordship of another, and you hold of Viane and of her heirs etc., and we will aver that you do not hold of us, and that you never rendered us service etc.

Herle. You ought not to be received to the averment against your own deed, which witnesseth that we hold of you in pure and perpetual alms and that you are bound to acquit us against all folk etc.

Scrope. The averment which I offer is not against the deed, for I am offering to aver that you do not hold of us and never did hold etc.

And he had a day a month after Easter.

Scrope, as above.

And because the aforesaid R. acknowledged his deed whereby he granted and confirmed to the aforesaid Abbot the aforesaid tenements, as being of his fee, to hold etc., reserving to himself benefits, to wit, prayers etc., and granted by the deed, to the binding of his heirs, that he would acquit the Abbot against all folk, judgment was given that he should acquit the aforesaid Abbot and his successors for ever of the aforesaid services, and that the Abbot should recover his damages, which are assessed etc. and that R. be in mercy. And the Sheriff was commanded etc.

¹ See text and note on the opposite page.

II.¹

Labbe de Holand porta bref de meen vers Robert Rauanell et counta qil tint de li en fraunche almoigne et qil fut destreynt par vn Martyn pur homage et sute.

Frisk. Qi auez del aquitance.

Labbe mist auant fet qe Robert aueit conferme a T. son predecessor et a ses successors toz les tenementz qe vne viane dona a vn H. son predecessor et le confermement voleit a tenir en pure etc. de Robert et ses heirs et obliga li et ses heirs a la garantie et alaquitance.

Frisk. Vous mesme attornastes degre a Isoud mere Martin qi ore vous destreyne qi heir il est iugement si nous li deuoms aquiter pus le Weuia.

Frisk. Le fet qil mette auant proue qil tent de vne viane et de ses heirs en fraunche Almoigne vers qi il ad sa aquitance.

Toud. Viane dona a nostre predecessor ceus tenementz com parcel dun maner de T. reseruant nos seruices a mesme le maner pus Gilbert [*sic*] fiz et heir viane dona a cesti R. le maner od les seruices regardants par gel doun et graunt nous sumes attendantz ali de cels seruices com apendant et il par son fet ad reserue ali seruices de fraunche almoigne etc. et prioms qil respounde al fet.

Scrop. Homme ne peut pas par confermement reseruer seruices ali mesme et vous dites qe nous porchacames en quel cas vous ne purriez deuenir nostre tenant si noun par attornement, et homme ne peut de tels seruices atorner. Estre ceo nous voloms auer qil ne tent pas de nous ne vnqes ne tint.

Herl. A ceo nauendrez pas contre le fet qe proue le reuers.

43. ANON.²I.³

Priere destre ressu ou les tenementz furent donez en fraunc marriage oue la femme bref fu porte vers le peire qe fit defaute et le issue fut ressu a defendre son droit.

Bref fut porte vers vn tenant qe fit defaute etc. Sur ceo vynt vn William et dit qe les tenementz furent donez al tenant en franc marriage oue sa mere sa miere moert et il est issue et serra lour heir par la taille et pria destre ressu a defendre son droit.

¹ Text of (II) from *X*.
herbert, *Resceit*, 147, fo. 98 v.

² Reported by *D*, *M*, *P*, *T*, and *Y*. This is Fitz-

³ Text of (I) from *D*.

II.

The Abbot of Holland brought his writ of mesne against Robert Rauanell and counted that he held of him in free alms and that he was distrained by one Martin for homage and suit.

Friskenev. What have you in respect of the acquittal?

The Abbot tendered a deed by which Robert confirmed to T., his predecessor, and to his successors all the tenements which one Viane gave to one H., his predecessor; and the confirmation recited that they were to be held in pure etc. of Robert and his heirs, and bound himself and his heirs to warranty and to the acquittal.

Friskenev. You voluntarily attorned yourself to Isoud, the mother of Martin, whose heir Martin is, who is now distraining you. Judgment whether we ought to acquit him.—Afterwards he waived this.

Friskenev. The deed which he tendereth proveth that he holdeth of one Viane and of her heirs in free alms, and he can claim his acquittal from them.

Toudeby. Viane gave those tenements to our ancestor as parcel of the manor of T., and reserved our services to the same manor. Afterwards Gilbert, son and heir of Viane, gave the manor, together with the services regardant to it, to this Robert; under which gift and grant we owe him these services as appendant, and he, by his deed, hath reserved to himself services of free alms etc., and we pray that he answer to the deed.

Scrope. A man cannot reserve services to himself by a confirmation, and you say that we were purchasers; in which case you could not become our tenant save by attornment, and one cannot attorn for such services. Further, we will aver that he doth not hold of us and never did hold.

Herle. You will not get to that in the face of the deed that proveth the contrary.

43. ANON.

I.

Tenements were given in free marriage. A writ is brought against the husband, who makes default. The son prays to be received to defend his right. He is received.

A writ was brought against a tenant that made default etc. Thereupon one William came and said that the tenements were given to the tenant together with his [*sc.* William's] mother in free marriage. His mother is dead, and he is issue of the marriage, and will be their heir by the tail; and he prayed to be received to defend his right.

Hedon. Le tenant ad plus haut estat qe franc tenaunce qar bref de Waust ne git nient vers lui iugement.

Ing. Statut¹ parle auxibien de tenementz en fee taille qe sont emplede come de tenementz a terme de vie iugement etc.

Et fut ressu.

II.²

Ou le issue fust receu viuant son pere en fee taille en qe plee la resceit fu bien proue etc.

Vn A. porta sun bref de dower etc. le tenant fit defaute apres defaute par qi les tenementz furent a perdre etc. vient le issue auant iugement rendu et dit qe les tenementz furent donez a son pere et a les heirs de son corps engendres et il fut eygne fiz sun pere et heir et pria estre receu a defendre son droit.

Hert. Heir ne puet il estre viuant sun pere qar homme ne siet qi suruiuera autre. Ieo pose qe vn tenance soit done par forme de doun celui a qi le doun est taille engendre vne fille il est enplede des tenementz la fille vient deuant iugement rendu et prie estre resceu a defendre son droit puis pendant le play le tenant engendre vn fiz. Et pur ceo qe la fille fit defaute fut le fiz amene le Iour en Court et pria estre resceu a defendre son droit et coment tantsolement desques a mal del heure qe ele fut resceu com heir etc. cler est qe la fille ne puet estre heir par tant com illi ad mal par qi viuant launcestre vous ne poez dire qi est heir ou qi noun.

Touth. Ceux tenementz sunt donez a lui et al issue de son corps engendre et il est issue eigne etc.

Bereford. Donqe grantez vous qe coment qil soit issue vous ne volez nent aforcer qil ne soit heir.

et fut la cause par qei il se entrelessa cele parole heir donc serreit hors de cas de statut qe lestatut dit admittantur heredes etc.

¹ See the note on the opposite page.

² Text of (II) from Y.

Hedon. The tenant hath a higher estate than freehold, for writ of Waste lieth not against him. Judgment.

Ingham. The Statute¹ speaketh as well of tenements in fee tail that be impleaded as of tenements held for life. Judgment etc.

And he was received.

II.

The son of a tenant in fee tail comes during the lifetime of his father and establishes his claim to be received to defend his right.

One A. brought his writ of dower etc. The tenant made default after default, whereby the tenements were in peril of being lost etc. Before judgment was given the issue came and said that the tenements were given to his father and the heirs of his body engendered; and that he was the eldest son of his father and his heir, and he prayed to be received to defend his right.

Hartlepool. He cannot be heir while his father is alive, for none can know who shall survive other. I put the case that a tenancy be given by form of gift. He to whom the gift is tailed begetteth a daughter. He is impleaded of the tenements. The daughter cometh before judgment given and prayeth to be received to defend her right. Then afterwards, while the plea is still pending, the tenant begetteth a son. And because the daughter made default the son was brought into Court on the day and he prayed to be received to defend his right; and so, though the daughter was received as heir, though only until the birth of male issue, it is clear that she could not be heir when there was male issue. Wherefore, during the life of the ancestor, you cannot say who is or who is not heir.

Toudeby. These tenements are given to the father and to the issue begotten of his body, and this man is the eldest son etc.

BEREFORD C.J. Then do you admit that though he be issue you do not wish to assert that he is heir?

² And the reason why *Toudeby* did not want to omit the word 'heir' was that such omission would leave him outside the Statute, which saith 'admittantur heredes etc.'³

¹ The Statute of Westminster II. cap. iii. It does not, however, include the case of tenancy in fee tail amongst those in which the heir may be received to defend his right, though the *Statutum de defensione iuris*, 20 Edward I, enacting that persons received under

the Statute of Westminster II. to defend their right shall give security, seems to suppose that it does.

²⁻³. This is probably the meaning of what the scribe should have written. The text, as it stands, is not capable of anything like a literal translation.

Touth. Ceux tenementz sunt donez a lui et a ses heirs de son corps engendrez en tant si nest le pere tenant si noun du fraunc tenement et le dreit demoert en la persone le issue.

Suttone. Ieo vous moustre qe noun qar le pere soul sanz le issue puet vouchier en le droit a garant et puet en bref de droit ioindre bataille ou grante assise et tut perdit il le fitz nauereit iammes rescouerir de mesme la terre cuius contrarium patet vere si nul droit ne fut demorant en sa persone quia res inter alios acta etc. par qi il piert etc.

Touth. Si nul issue ne fut etc. celui a qi la reuersion apent etc. serra resceu et plus fort est qe lestrange par vertue del remanere pur qei ne deit donques le issue estre receu etc.

Bereford. Si les tenementz fuissent donez au pere et a la mere et a les heirs de lour deus corps engendrez et lautre fust mort par qei celui qe suruesquit fust enplede en tel cas par auenture serra le issue resceu et ceo est pur ceo qe homme siet bien qe autre heir ne puet estre si noun celui qest de lour deus corps engendrez.

Touth. Auxibien puet le vn cas chier en noun certain com lautre qar tut soit il issint qe lautre a qi le doun se taille soit mort possible est qe il yeient treis fiz ou qatre des queux ne puet homme sauer etc.

Sutton. Si le pere voleit eide prier del issue si ne serroit il pas resceu etc. par qei il me semble qe nent plus ne serroit le issue resceu etc. a suruenir etc.

Touth. Nous auoms veu altrefoiz etc. qe vn homme auoit purchace a lui et a sa femme vn tenement et as heirs de lour deus corps engendrez furent enpledez et fesoient defaute etc. Et pur ceo qe eux naueient point de issue si vient celui a qi la reuersion apendoit et fut receu pendant cel play si auoient eux vn fiz et fut pusne et porte en Baunk en berz et pria estre resceu etc. et fust son pere et sa mere en pleine vie dont nous vous prioms etc.

III.¹

Vn bref feut porte vers vne femme de certain tenements qe fit defaute apres defaute survint vn A. et pria estre resceu etc. et dit qe les tenement sfurent donez a Iohan soun pere oue meme ceste vers qi

¹ Text of (III) from *M* collated with *T*.

Toudeby. These tenements are given to him and to the heirs of his body begotten. What tenancy has the father thereby if not a freehold? And the right dwelleth in the person of the issue.

Sutton. I will prove the contrary to you; for the father alone, without the issue, can vouch to warranty in the right, and can, in a writ of right, join battle or grand assize; and, if he lost, the son would never get recovery of the same land, whereas it is obvious that the contrary would be the case if there were any right dwelling in the person of the son, *quia res inter alios acta aliis non preiudicare debet*; wherefore it seemeth etc.

Toudeby. If there be no issue etc., he to whom the reversion belongeth etc. will be received, and the son stands in a much stronger position, in virtue of the remainder, than a stranger would do. Should not, then, the issue be received etc.?

BEREFORD C.J. If the tenements were given to the father and to the mother and to the heirs of their two bodies engendered, and the father or mother die and the survivor of them be impleaded, then the issue may well enough be received; and the reason is that we know that none can be heir except one that is engendered of the bodies of both of them.

Toudeby. As well in this case as in the other there is a lack of certainty, for though one of the two to whom the gift was tailed be dead, yet there may be three or four sons, and no one can know which of these etc.

Sutton. If the father wanted to pray aid of the issue he would not be received etc.; wherefore it seemeth to me that the issue should none the more be received to intervene etc.

Toudeby. At other time we have seen the case of a man who had purchased a tenement to himself and his wife and the heirs of their two bodies engendered. The man and his wife were impleaded, and made default. And because they had no issue, he to whom the reversion belonged came and was received. While the plea was pending they had a son born to them and he was weakly and was brought into Bank in his cradle, and he prayed to be received etc., and yet his father and mother were in full life. Wherefore we pray you etc.

III.

A writ was brought against a woman in respect of certain tenements. She made default after default. One A. intervened and prayed to be received etc. and said that the tenements were given to John, his father, and to this same woman against whom the writ is brought, in

le bref est porte en fraunk mariage et Iohan nostre pere est mort et nous sumes lour heir et prioms etc.

Denom. Resceu ne devez estre qe vous auez coneu qe cely vers qi le bref est ore porte est purchasseresse et viuant lautre homme nesciet¹ qe est heir iugement.

Scrop. Le statut dit admittantur heredes aut illi ad quos spectat reuersio et nous sumes heir iugement.

Et feut resceu et voucha le donour et stetit.

IV.²

Nota ou cely en le remeyndre fut resceu a defendre son dreit et voucha et fut resceu non obstante statuto Westmonasterii secundo.

Vn bref fut porte vers vn tenant qe fit default apres default et survint vn R. et dit qe le remeindre de tenemenz apres la mort cely qe fit default si fut a luy etc. et pria estre resceu etc. et porrexit scriptum ad Curiam qe testmoigna son dit et fut resceu non obstante statuto qe ne fet mencion si noun pur les heirs etc. ou pur ceus a queux la reuersion apent et voucha a garrantie et le voucher fut resceu.

44. DE LA HAYE *v.* GYNES AND BAYSE.³

Per que seruicia ou launcestre le conissour aueit grante les seruices a vn autre.

Vn per que seruicia fu porte vers vn tenant et demande li fust de qi il tient et par queux seruices.

Scrop. Nous tenoms de vn R. par fealte etc.

Toud. Vous tenistes de nostre conissur le iour de la conussaunce ete prest etc.

Scrop. Ou est le conussur qe vous ne poez estre partie a tiel auerement.

Toud. Le conussur si ad demis par mie la conussaunce par quei etc.

Scrop. Demande nous est par queux seruices nous tenoms la quele chose est en le dreit et a cesti bref purioms auxi haut pleder qeu bref de custumes et de seruices Car apres la conissaunce des seruices nous naueroms lames le ne vexes.

Toud. Nous voloms auer qe nostre conussur fust seisi des seruices iour de la conussaunce fete.

¹ ne seit, *T.*

² Text of (IV) from *P.*

³ Reported by *R.* Names of the parties from the Record.

free marriage ; and John our father is dead, and we are their heir, and we pray etc.

Denham. You ought not to be received, for you have admitted that she against whom the writ is now brought is a purchaser ; and during another's lifetime it cannot be said who will be heir. Judgment.

Scrope. The Statute saith *admittantur heredes aut illi ad quos spectat reuersio*, and we are heir. Judgment.

And he was received and he vouched the donor, and the voucher was allowed.

IV.

Note that the remainderman was received to defend his right, and he vouched and his voucher was allowed, the Statute of Westminster II. notwithstanding.

A writ was brought against a tenant that made default after default ; and one R. intervened and said that the remainder in the tenements, after the death of him that was in default, was in himself etc., and he prayed to be received etc. ; and he tendered a writing to the Court which witnessed his statement. And he was received, in spite of the fact that the Statute mentions only heirs etc. or those to whom the reversion belongeth ; and he vouched to warranty and the voucher was allowed.

44. DE LA HAYE *v.* GYNES AND BAYSE.

Per que servicia where the conusor's ancestor had granted the services to another.

A writ of *per que servicia* was brought against a tenant ; and he was asked of whom he held and by what services.

Scrope. We hold of one R. by fealty etc.

Toudeby. You held of our conusor the day when the conusance was made. Ready etc.

Scrope. Where is the conusor, for you cannot be party to such an averment [in his absence] ?

Toudeby. The conusor hath alienated by the conusance, therefore etc.

Scrope. We are asked by what services we hold. This toucheth the right, and to this writ we may plead as high as in a writ of customs and services ; for after the conusor of services we shall never have the *ne vexes*.

Toudeby. We will aver that our conusor was seised of the services on the day when the conusance was made.

Scrop. Nostre auncestre le conussur granta certain tenemenz ensemblement oue les seruices a A. par ceo fet et puis relessa par ceo fet Estre ceo si le conussur fust issi nous purioms desclamer.

Toud. Le desclamer ne serreit pas receuable en tiel cas qil ne durreit a nul homme auantage.

Scrop. Nous auoms veu le desclamer receu ceinz et pur tant ad le tenant departi quites hors de la court a soun peril et dautre part si vn tenant fust feffe puis le statut en fee a tenir de soun feffour par certains seruices et le feffour vousist granter les seruices le tenant il ne saturnereit mie pur le grant de mult plus fort en ceo cas.

Toud. Ceo nest pas merueil pur le statut mes nient contre esteant cel fet qe vous mettez auant vnqore pust estre qe vous naturnastes dounke par mi ceo grante et ensi ne demorez nulli tenant.

Denum. Meschief serreit si vous fussez receu alauerement en countre le fet car si le conussur fust en court il ne auereit nul auerement a voider le fet.

Berr. Quei si le conussur fust bastard et fust mort endeuendreit les seruices.

Denum. Ieo crei qe ceo serreit plus tost eschete al chief seignur qe celi a qi la conissaunce fust fet les auereit.

Scrop. De puis qe nous mettoms auant le fet launcestre le conussour iugement si a nul auerement deuient estre receu.

Berr. Si vous fusse receu a tiel auerement ia ne bosoinereit il de porter bref de custumes et des seruices par quei a tiel auerement etc. encountre le fet etc. ne deuez estre receu.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 147d., Cambridgeshire.

Preceptum fuit vicecomiti quod venire faceret hic ad hunc diem Ricardum de Gynes et Thomam Bayse de Papworth Euerard ad cognoscendum per que seruicia tenent tenementa sua de Willelmo Doune de Iselham et Matilda vxore eius in Pappeworth Euerard que seruicia iidem Willelmus et Matilda hic concesserunt Willelmo de la Haye per finem etc. Et modo veniunt tam predictus Willelmus de la Haye quam predicti Ricardus et Thomas. Et iidem Ricardus et Thomas quesiti per Iusticiarios per que seruicia ipsi

Scrope. Our ancestor, the conusor, granted certain tenements, together with the services, to A. by this deed, and afterwards released to him by this deed. Further, if the conusor were present we could disclaim.

Toudeby. A disclaimer would not be receivable in the circumstances, for it would be of no advantage to anyone.

Scrope. We have seen the disclaimer received here, so that the tenant has gone quit out of Court at his own peril¹; and, moreover, if a tenant were enfeoffed in fee subsequently to the statute to hold of his feoffor by certain services, and the feoffor wanted to grant the services of the tenant, the tenant would not attorn himself in virtue of the grant; and the argument holdeth even more strongly in the present circumstances.

Toudeby. That is likely enough under the Statute²; but, this deed that you tender notwithstanding, it is quite possible that you did not then attorn under this grant, and so are nobody's tenant.

Denham. It would be unfair to us if you were received to an averment against the deed, for if the conusor were in Court he could make no averment in avoidance of the deed.

BEREFORD C.J. What would become of the services if the conusor were a bastard and dead?

Denham. I believe that they would sooner escheat to the chief lord than that he to whom the conusance was made should have them.

Scrope. Seeing that we tender the deed of the conusor's ancestor, judgment if they ought to be received to any averment.

BEREFORD C.J. If you were to be received to this averment, he [? R.] could never henceforward bring a writ of customs and services; wherefore you ought not to be received to such an averment etc. against the deed etc.

Note from the Record.

De Banco Rolls, Hil., 5 Edw. II. (No. 190), r. 147d., Cambridgeshire.

The sheriff had been commanded that he should make to come here upon this day Richard of Gynes and Thomas Bayse of Papworth Everard to make recognition by what services they hold their tenements in Papworth Everard of William Downe of Isleham and Maud his wife, the which services the same William and Maud did here grant to William de la Haye by a fine etc. And now both the aforesaid William de la Haye and the aforesaid Richard and Thomas do come. And the same Richard and Thomas being asked by the Justices by what services they hold their tenements in the vill

¹ At his own peril because if, after his disclaimer, it were found that he did in fact hold of the lord, he would lose his land.
² Qy. *Quia Emptores*. The argument is obscure.

Note from the Record—*continued.*

tenent tenementa sua in predicta villa de predictis Willelmo Doune et Matilda idem Thomas dicit quod ipse nulla [*sic*] terras seu tenementa tenet de predictis Willelmo Doune et Matilda in predicta villa. Dicit reuera quod ipse tenet quatuor acras terre in eadem villa de predicto Ricardo de Gynes per fidelitatem et seruicium duorum denariorum Et non de predictis Willelmo Doune et Matilda etc. Et idem Ricardus de Gynes dicit quod ipse nulla tenementa tenet in predicta villa de predictis Willelmo Doune et Matilda etc. Dicit enim quod ipse tenet quartam partem ville de Papworthe Euerard vt in dominico et seruicio de quodam Roberto Bard per fidelitatem et seruicium duodecim denariorum per annum pro omni seruicio Et idem Robertus Bard seruicio ipsius Ricardi de Gynes tenet per legem Anglie de hereditate cuiusdam Iohannis filii ipsius Roberti Bard etc. et non de predictis Willelmo Doune et Matilda etc. Dicit insuper idem Ricardus de Gynes quod predicta quarta pars predictae ville in dominico et seruicio quondam fuit in seisina quorundam Iohannis de Saham et Matilde vxore eius vt de Iure ipsius Matilde Qui quidem Iohannes et Matilda vxor eius per cartam suam dederunt concesserunt et confirmauerunt quibusdam Ricardo de Gynes et Margerie vxori eius et heredibus ipsius Ricardi cuius statum iste Ricardus de Gynes nunc habet de perquisito suo imperpetuum escambium pro manerio suo de Boytone vnum messuagium in predicta villa de Pappeworthe Euerard videlicet illud messuagium quod quondam fuit Cassandre vxoris Henrici de Beche quondam domini eiusdem ville et quinquaginta et nouem acras terre et dimidiam ad dictum messuagium spectancia [*sic*] cum toto Iure et clameo quod habuerunt et quod eis et heredibus suis aliquo Iure hereditario attingere potuit in predicta villa de Pappeworthe etc. vt in homagio redditibus Wardis releniis escaetis liberorum tenementorum et in seruiciis et consuetudinibus villanorum etc. cum omnibus pertinenciis etc. vt in siluis campis pascuis pasturis aquis molendinis semitis viis donacione ecclesie etc. habendum et tenendum de capitalibus dominis feodi etc. Dicit eciam quod postmodum tenementis illis Pappeworthe in seisina predictorum Ricardi de Gynes patris etc. et Margerie existentibus predicta Matilda que fuit vxor Iohannis de Saham post mortem eiusdem Iohannis dum ipsa sola fuit per scriptum suum remisit et omnino pro se et heredibus suis quietumclamauit imperpetuum eisdem Ricardo et Margerie et heredibus ipsius Ricardi totum Ius et clameum quod vnquam habuit vel aliquo modo habere potuit in omnibus terris et tenementis que dicti Ricardus et Margeria tenuerunt in predicta villa de Pappeworth in dominico et seruicio de hereditate ipsius Matilde etc. Et profert predictam cartam et scriptum que hoc testantur et dicit quod predicta quarta pars predictae ville de Pappeworthe quam ipse modo tenet continetur in carta et scripto predictis etc. Et dicit quod Matilda vxor predicti Willelmi Doune est filia et heres predictae Matilde que fuit vxor predicti Iohannis vnde petit iudicium si eidem Willelmo de la Haye per recognicionem predictorum Willelmi et Matilde contra predictam factam [*sic*] antecessorum ipsius Matilde aliquod Ius accrescere possit in predicto seruicio etc.

Note from the Record—*continued*.

aforesaid of the aforesaid William Downe and Maud, the same Thomas saith that he holdeth no lands or tenements of the aforesaid William Downe and Maud in the aforesaid vill. He saith that in sooth he doth hold four acres of land in the aforesaid vill of the aforesaid Richard of Gynes by fealty and a service of two pence, and not of the aforesaid William Downe and Maud etc. And the same Richard of Gynes doth say that he doth hold no tenements of the aforesaid William Downe and Maud etc. in the aforesaid vill; for he saith that he doth hold the fourth part of the vill of Papworth Everard as in demesne and service of a certain Robert Bard by fealty and the service of twelve pence a year for all service, and the same Robert Bard in the service of the same Richard of Gynes doth hold by the law of England of the inheritance of a certain John, son of the same Robert Bard etc. and not of the aforesaid William Downe and Maud etc. The same Richard of Gynes doth say further that the aforesaid fourth part of the vill aforesaid in demesne and service was aforetime in the seisin of a certain John of Soham and Maud his wife, as of the right of the same Maud. And this John and Maud his wife did by their charter give, grant and confirm to a certain Richard of Gynes and Margery his wife and to the heirs of the same Richard, whose estate this Richard of Gynes now hath by his purchase, in perpetual exchange for their manor of Boyton, a messuage in the aforesaid vill of Papworth Everard, to wit, that messuage that formerly belonged to Cassandra, wife of Harry of Beche, aforetime lord of the same vill, and nine and fifty and a half acres of land regardant to the said messuage, together with all right and claims in the aforesaid vill of Papworth etc. which they had or which by any hereditary right might accrue to them or their heirs, such as homage, rents, wardships, reliefs, escheats of freeholds, and services and customs of villeins etc., together with all appurtenances etc. as woods, pasture-lands, pastures, waters, mills, footpaths, roads, advowson of the parsonage etc. to have and to hold of the chief lords of the fee etc. For he saith that afterwards, while those tenements in Papworth were in the seisin of the aforesaid Richard of Gynes, father etc., and Margery, the aforesaid Maud that was wife of John of Soham, after the death of the same John and while she was sole, did by her deed remit and for herself and her heirs did wholly quitclaim for ever to the same Richard and Margery and the heirs of the said Richard all the right and claim which she ever had or in any way might have in any of the lands and tenements which the said Richard and Margery held in the aforesaid vill of Papworth in demesne and service of the inheritance of the same Maud etc. And he maketh *profert* of the aforesaid charter and writing which witness this, and he saith that the aforesaid fourth part of the aforesaid vill of Papworth, which he doth now hold, is comprised in the charter and writing aforesaid etc. And he saith that Maud, wife of the aforesaid William Downe, is daughter and heir of the aforesaid Maud that was wife of the aforesaid John. And by reason of the premises he asketh judgment whether any right in the aforesaid service etc. can accrue to the said William de la Haye by any recognition of the aforesaid William and Maud against the tenor of the aforesaid deed of the ancestors of the same Maud.

Note from the Record—*continued*.

Et Willelmus de la Haye dicit quod qualemuncque cartam et quod scriptum predictus Ricardus hic proferat etc. predicti Ricardus et Thomas die recognicionis predictæ scilicet a die sancti Michaelis in .xv. dies proximo preterito tenuerunt tenementa sua de predictis Willelmo Doune et Matilda vxore eius vt de Iure eiusdem Matilde videlicet predictus Ricardus vnum messuagium et vnam carucatam terre cum pertinentiis in predicta villa de Pappeworthe Euerard per homagium et fidelitatem et seruicium quarte partis feodi vnus militis et duorum solidorum per annum. Et predictus Thomas quatuor acras terre per fidelitatem et seruicium quatuor denariorum per annum etc. Et idem Willelmus Doune et Matilda eisdem die et anno fuerunt seisisi de predictis seruiciis pro predictis tenementis per manus ipsorum Ricardi et Thome et hoc paratus est verificare etc. Et quia predicti Willelmus Doune et Matilda non sunt presentes in Curia etc. nec huiusmodi verificacio in hoc casu est admittenda contra tenorem carte et scripti predictorum in absencia predictorum Willelmi Doune et Matilde etc. Dies datus est eis hic a die sancte Trinitatis in .xv. dies et preceptum est vicecomiti quod venire faciat hic ad prefatum terminum predictos Willelmum Doune et Matildam vxorem eius ad respondendum Simul etc. et ad capiendam partem Cyrographi etc.

45. ANON.¹

Nota qe [en] vn bref dentre le tenant fist default par qi le graunt Cape fut agarde et returne a ceu Iour.

Hedoun. Nous relessom la defaute et responez.

Hengham. Nous demandoms la vewe.

Hedoun. La vewe ne deuez auoir car vous estes assez ascerte en tant com vostre terre fust pris et par vous mesme respleuy.

Hengham. Vous auez relese la defaute issi qe nous sumes en nostre primer estat etc.

Beref. La terre est prise et respleuy ergo il est ascerte etc. et ceo est vn maluois argument.

Beref. Si vous volez demorer la demorrez qar vous veez bien qe ceo nest pas lei qe vous parlez.

Et postea *Hedoun* concessit visum.

¹ Reported by Y.

Note from the Record—continued.

And William de la Haye saith that any charter and any writing which the aforesaid Richard may tender here etc. notwithstanding, the aforesaid Richard and Thomas on the day of the recognition aforesaid, to wit, a fortnight after St. Michael's Day last past, did hold their tenements of the aforesaid William Downe and Maud his wife as of the right of the same Maud; that is to say, the aforesaid Richard did hold one messuage and one ploughland, together with the appurtenances, in the aforesaid vill of Papworth Everard by homage and fealty and the service of the fourth part of one knight's fee and two shillings every year; and the aforesaid Thomas did hold four acres of land by fealty and the service of four pence every year etc. And the same William Downe and Maud on the same day and year were seised of the aforesaid services for the aforesaid tenements by the hands of the same Richard and Thomas, and this he is ready to aver etc. And seeing that the aforesaid William Downe and Maud are not present in Court etc. and that an averment of this kind cannot in these circumstances be received against the tenor of the aforesaid charter and writing in the absence of the aforesaid William Downe and Maud etc. a day is given them here a fortnight after the Day of the Holy Trinity; and the sheriff is commanded that he make the aforesaid William Downe and Maud his wife to come here at the aforesaid term to answer together with etc. and to receive part of a chirograph etc.

45. ANON.

Note that in a writ of entry the tenant made default, wherefore the grand *cape* was awarded and was returned on this day.

Hedon. We waive the default. Answer.

Ingham. We ask the view.

Hedon. You ought not to have the view, for you are sufficiently certified, seeing that it was your land that was seized and that it was replevied by yourself.

Ingham. You have waived the default; consequently we are now in our original condition etc.

BEREFORD C.J. The land has been seized and replevied, therefore he is certified etc. That is a poor sort of argument.

BEREFORD C.J. If you want to go to judgment on that point, go; but you must surely see that what you are talking is not law.

And *Hedon* afterwards conceded the view.

46. ANON.¹I.²

Douwere ou le tenaunt voucha.

Vn bref de douwer fut porte vers vn gardeyn de fait qe voucha ³le gardeyn de dreyt⁴ son lessour etc.

Denom. Voucher ne deuetz qar la femme demande franc tenement et vous ne tenetz qe chatel et cely qe vous vouchez nad qe⁵ chael par qi etc. Et daltrepart qant gardeyn lest⁶ garde il la lest ouesqe la charge de douwere etc.

Willoughby. Si bref de douwere seit porte vers termor il pourra voucher et nous [nauoms] qaterme des aunz par qi nous ne deuoms voucher.

Hoc non obstante il fut ouste del voucher et ⁷porta soun bref de couenaunte etc.⁸

II.⁹

Dowere vers gardein de fet qe vocha a garrantie et ne fut pas receu a vocher.

Vne femme porta soun bref de dowere vers vn gardein qe vient en court et dist qil auoit cele garde de vn Richard le quel auoit la garde du les nostre seignor le Roy et le vocha a garrantie par eide etc.

Hedoun. Vous ne li poez pas vocher kar le bref est porte vers vous cum vers gardein et gardein nad ke chatel qe ne puet nient vocher ne estre garranti etc.

Wilbi. Duresse ensouereit si nous ne pouns vocher de loure qe nous auoms le fet celi qe nous lessa qe veut garranti.

Denum. Nous demandoms vers vous fraunc tenement et vous nauet ke garde qe nest fors ke chatel mes si le vocher fust accepte dount vous recouerez autre estat qe ala value de ceo qe vous auez ore qe serreit [inconuenience]¹⁰ de lei.

par quei agarde fust qil ne pout vocher.

¹ Reported by *B, C, D, M, P, R,* and *T.* ² Text of (I) from *D,* collated with *B, C, M, P,* and *T.* Headnote from *P.* ³⁻⁴ Supplied from *B* and *C.* ⁵ *M* omits.

⁶ lesse, *M.*

⁷⁻⁸ et dit vnqes espose, *T.*

⁹ Text of (II) from *R.*

¹⁰ In the original manuscript there is a blank space left where I have suggested *inconuenience.*

46. ANON.

I.

Dower, where the tenant vouched.

A writ of dower was brought against a guardian *de facto* who vouched his lessor, the guardian *de iure*.

Denham. You ought not to vouch, for the wife is claiming a freehold, and you hold chattels only, and he that you would vouch hath only chattels ; wherefore etc. And, moreover, when a guardian demiseth the wardship he demiseth with it the charge of dower etc.

Willoughby. If a writ of dower be brought against a termor he can vouch, and we have only a term of years. Why, then, ought we not to vouch ?

But, this argument notwithstanding, he was ousted of his voucher, and he brought his writ of covenant etc.

II.

Writ of dower brought against a guardian *de facto* who wanted to vouch to warranty, and was not allowed to do so.

A woman brought her writ of dower against a guardian who came into Court and said that he had that guardianship of one Richard who had the guardianship by the grant of our lord the King, and he vouched him to warranty by aid etc.

Hedon. You cannot vouch him, for the writ is brought against you as guardian ; and a guardian hath naught but chattels in respect of which you can neither vouch nor be warranted.

Willoughby. It will be hard on us if we cannot vouch, for we have the deed of our lessor which bindeth him to warranty.

Denham. We are claiming a freehold from you and you have only the wardship of chattels. If, then, the voucher were accepted, you would recover other estate than [merely] to the value of what you now have ; and that would be against the intention of the law.

And on that ground it was ruled that he could not vouch.

CASES FROM FITZHERBERT'S ABRIDGEMENT.

(a)¹ Replegiare vers Isoud qe fuit la femme R. I. de auers prise.

Ingl. Auowe par reson qe R. I. iadiz baron Alis fuit seisi des tenementz dount etc. est parcel etc. en son demene come de fee, et issint seisi enfeoffa vn D. en fee de mesmes lez tenementz, par qel feffement D. graunta al dit R. I. et al Isoud sa femme .x.li. de rent par an hors de mesmez lez tenementz a auer a eux et as heirez Isoud oue clause de distresce, et pur ceo qe .x.li. fuerent arere iour de la prise dun terme etc. la etc. cy auowe il de .C.s. come en les tenementz charges a son distresce.

Scrop. Diomus qe mesme cesty Isoud porta briefe de dower de mesmez ceux tenementz et recouurit le moyte par iugement cyens et del hure que el est seisi de moyte des tenementz charges, iugement si de lauter moyte pour lauter rent puisse auower.

Toud. Nous diomus qe .x.li. fuerent arere et en le iour de prise, mes nostre auowre discent pour les C.s. pour queux nous auoweoms a qe ne resposndent nient par qe iugement etc.

Scrop. Est diversitie lou chose est extient par fait et ou par ley, quar par le purchase le segnior del demene si serrount les seruices departables et apporciones issint qe solonque le quantite qe il est purchase, des tenementz serra les seruices en sa mayn extient, et des auters seruices qe nest departable come de suit de court et huiusmodi, par my le purchase de segnior dun part de demene qe fuit tenu par suit tout serra extient.

Ber. Nest pas grauntable ceo qe vous ditz, eins vous die qe le suit serra mys com en esteint, et issint apporsione et solonque le porcion cy doit il en le maine le segnior estre extient, et ceo est acquite.

Pass. Si le tenaunt tient par homage, et le segnior purchase parcel des tenementz en demene nous entendomus qe le homage este extient.

Ber. En cel cas il auera homage par reson de ceo parcel qe demurt en le mayn le tenant.

Pass. Si le homage soit vn seruice et vn gros par soy par le pourchase

¹ Auowre, f. 120d., case 206. Case 16 (p. 83) in this volume.

CASES FROM FITZHERBERT'S ABRIDGEMENT.

(a)¹ Writ of replevin against Isoud that was wife of R. I. for cattle seized.

Ingham avoweth by reason that R. I., that was formerly husband of Alice, was seised of the tenements of which etc. is parcel etc. in his demesne as of fee, and while he was so seised he enfeofed one D. in fee of the same tenements. In virtue of this feoffment D. granted to the said R. I. and to Isoud his wife ten pounds of rent every year out of the same tenements, to have to them and to the heirs of Isoud, with a clause for distress; and because ten pounds due at a certain term were in arrear on the day of the seizure, Isoud therefore avoweth for a hundred shillings, as a distress made in the tenements charged to her distress.

Scrope. We say that this same Isoud brought a writ of dower in respect of these same tenements and recovered the moiety by judgment here; and, since she is seised of a moiety of the tenements charged, judgment whether she can avow of the one moiety for the other rent.

Toudeby. We say that ten pounds were in arrear on the day of the seizure, but our avowry is in respect of the hundred shillings for which we are avowing, to which they make no answer. Wherefore judgment etc.

Scrope. There is a difference between a thing being extinguished by a deed and by the action of law; for, upon the lord of the demesne's purchase, services that are partible will be apportioned, so that a portion of them will become extinguished in his hand, according to the amount of his purchase; and, in respect of other services which are not partible, such as suit of Court and the like, the whole will be extinguished by the purchase by the lord of a portion of the demesne that was held by suit.

BEREFORD C.J. I cannot agree with what you say; but I tell you that suit will be, so to speak, valued, and so apportioned, and a portion of it corresponding with the amount of land in the lord's hand will be extinguished; and that is equity.

Passeley. If the tenant hold by homage and the lord purchase a parcel of the tenements in demesne, we think that the homage will be extinguished.

BEREFORD C.J. In that case the lord will still have homage in respect of the parcel which remaineth in the tenant's hand.

Passeley. If the homage be a service and a gross in itself, the

¹ Fitzherbert's text is so corrupt that a literal translation is often impossible.

de segnior dun part de demene le homage est extient, mes si le homage ne fuit vn gros par soy mes dependaunt sur escuage la par purchase de parcel del demene par le segnior le homage nest extint etc.

Berr. Le quel ceo soit vn gros ou dependaunt sur escuage ou auter service ieo auerai homaige auxibien de le parcel com del entierte.

Scrop. Nous sumus a distroier tout son auowre, pur ceo qe il est seisi de parcel des tenementz et par reson qe il est son fait demesne etc.

Deuon ad idem. Si rent seke soit due de tenementz qe sont en maines dez diuers gentz, si vn des tenants moy disseise ieo nauerai my mon recouerir par assise si non qe ieo nosme trestoutz les tenantz, et par taunt apiert qe toutz les tenementz sont charges, et del hure qe vous estez seisi de parcel iugement etc.

Ber. Nient semble, car en pris des auers par vostre auowre vous excusez vous mesme de vn torcious prise, lequel etc. le partie attache en vostre parson, et quel prise est auowable en chescun parcel des tenementz charges, et le force de quel auowre tout chiet sur le lieu ou le prise fuit fait, mez en assise de nouel disseisine coment qe vous dies en vostre pleint et nosme toutz les tenementz dount le rent issi et si couient il qe vous nome toutz les tenantz des tenementz dount le rent etc. et ceo non est semblable.

Deuon. Nous auomus rienz en les tenementz ou il auowe le prise, si non en droit noster feme etc. et priomus aide de luy, et leide fuit graunt et somouns issist a garnir le [*sic*] feme etc.

(b)¹ P. port replegiare de etc. verz W. qe auowe pur ceo qe le pleintiff tient de luy vn mese etc. par .iiij.s. par an dount le lieu ou etc. des queux services vne Isoud cosin cesty W. qi heire il est fuit seisi par les mayns mesme cesty P. come par les mains son verrey tenant et pour ceo qe Isoud morust sauns heir de son corps resorti le droit de ceux services a vn C. come auant [*sic*] et heir Isoud soer Iordan pier Is[oud] et de C. a cesty W. come a fitz et heire etc.

Wilby. Nous diomus qe nul dreit de ceux services puit resortir a C. quar ceux sont regardant al maner de B. de qel maner vne Alice feme iordan fuit seisi en fee, le qel iordan et A. tiendrent le maner etc. come de droit A. et Iordan engendra de cesty A. mesme cesty Isoud de qi seisine w. auowe del A. discendi le maner a Isoud come a file et

¹ Auowre, f. 120 d., case 207. Case 3 (p. 6) in this volume.

homage is extinguished by the purchase by the lord of a parcel of the demesne ; but if the homage were not a gross, but dependent upon escuage, then, in that case, the homage is not extinguished by the purchase of a parcel of the demesne by the lord.

BEREFORD C.J. Whether it be a gross or dependent upon escuage or other service, I shall have homage just as well of the parcel as of the whole.

Scrope. We are here to destroy her whole avowry, by reason that she is seised of a parcel of the tenements and because of this, which is her own deed etc.

Denham, ad idem. If a rent seck be due from tenements that are in the hands of divers folk, then, if one of the tenants disseise me I shall not get my recovery by assize unless I name all the tenants ; from which it appeareth that all the tenements are charged. Therefore, since you are seised of a parcel, judgment etc.

BEREFORD C.J. It is not a similar case ; for, in the case of a seizure of cattle, by your avowry you exculpate yourself from a charge of wrongful seizure which the plaintiff maketh against you ; and that seizure is avowable in every parcel of the tenements charged, and the validity of your avowal dependeth entirely upon the place where the seizure was made ; but in an assize of novel disseisin you must state and name in your plaint all the tenements from which the rent issueth, and so you must name all the tenants of the tenements from which the rent etc. ; and so the cases are not similar.

Denham. We have naught in the tenements wherein he avoweth the seizure except in right of our wife etc., and we pray aid of her—and aid was granted and a summons issued to give notice to the wife etc.

(b) P. bringeth his *replegiare* etc. against W. who avoweth on the ground that the plaintiff holdeth of him a messuage by a yearly rent of four shillings, of which the place where etc., of which services one Isoud, cousin of this W., whose heir W. is, was seised by the hands of this same P., as by the hands of her true tenant ; and, because Isoud died without heir of her body, the right to these services resorted to one C., as aunt and heir of Isoud, being sister of Jordan that was father of Isoud ; and from C. to this W. as her son and heir etc.

Willoughby. We say that no right to these services can resort to C., for they are regardant to the manor of B., of which manor one Alice, the wife of Jordan, was seised in fee ; and this Jordan and Alice held the manor etc. as of the right of Alice. Jordan engendered of this Alice this same Isoud of whose seisin W. avoweth. The manor descended from Alice to Isoud, as her daughter and heir ; and of this

heire dount le mese qe P. ore tient fut parcel adonquez le quel Isoud de mesme cesty mese enfeffa P. auaunt lestatut a tener de Isoud et ses heires par les seruices de .iiij.s. et del hure qe ceux seruices sont regardant al maner etc. le quel maner doit discendre en le sanke A. de qi le maner vient, et par qi iugement si W. qe soy fait cosyn par my Iordan qe est estraunge al sank A. puisse auower.

Malum. Et nous iugement etc.

Ber. Quaunt I. enfeffa P. dun parcel del maner etc. qe a luy discendi de A. ceux seruices sont a donque appurtenant al remeindre del maner etc. par qe le mort Isoud sauns heire de son corps ne puit defecte ceste appendaunce etc.

Malum. Si P. fuit enplede del tenauncy il vouchereit W. come cosin et heire Isoud etc. par le fait Is[oud] etc. par mesme le reson les seruices due est regardaunt a nous.

Ber. Negat hoc, et dixit quod sanguineus ex parte A. matris Isoud in hoc casu ligatus esset, et haberet escaetam si P. fecerit feloniam.

Fryss. Sir cest segniorie fuit le purchase Isoud par qi iugement si W. ne puit auow come heire Isoud etc.

Ber. Quant home enfeffe autre a tener de luy etc. cel segniores qe est a luy reserue est due par reson de droit qe il ad en le tenancy quant il soy dimist, et del hure qe le droit de ceo tenancie cy discendi de A. al Isoud etc. par qi al sank A. si doit cesty seigniorie estre regardaunt, et pur ceo nous demandomus vous si cel mese dount ou [*sic*] etc. est parcel del maner de B. ou non qe discendi de A. al Isoud.

Fryss. A plus haut qe al estat Isoud de qi seisin auoms auowe nauoms mestre a respoundre etc.

Ber. Le court tiendra graunt de vous, et puis aiourni ad audiendum iudicium etc.

(c)¹ Nota qe assignement de dowre ne entre par abbatement² ne par iugement ne fount mie degrees etc.

(d)³ Lessonor de seruices le roy doit vener al barre et este view del court qe il soit loial essonor, et si puit vn este essonor de plusours etc.

¹ Entre, f. 324d., case 66. See p. 103 above.

² The printed form is *abbe*.

³ Essone, f. 338d., case 80. See Note on p. 149 of this volume.

manor the messuage that P. now holdeth was parcel. Isoud afterwards, before the statute, enfeofed P. of this same messuage, to hold of Isoud and her heirs by the services of four shillings; and since these services are regardant to the manor etc., the which manor ought to descend in the blood of Alice from whom the manor came, we ask judgment whether W., who maketh himself cousin through Jordan that is a stranger to the blood of Alice, can avow.

Malberthorpe. And we ask judgment etc.

BEREFORD C.J. If when Isoud enfeofed P. of a parcel of the manor etc. which descended to her from Alice, those services were then appurtenant to the rest of the manor etc., that appendancy could not be defeated by the death of Isoud without heir of her body.

Malberthorpe. If P. were to be impleaded of the tenancy he could vouch W. as cousin and heir of Isoud etc. under the deed of Isoud etc., and for the same reason the services due are regardant to us.

BEREFORD C.J., denieth this, and said that a cousin on the side of Alice, mother of Isoud, would be bound in these circumstances, and would have escheat if P. committed a felony.

Friskenev. Sir, this lordship was the purchase of Isoud. Wherefore we ask judgment whether W. can avow as heir of Isoud etc.

BEREFORD C.J. When a man enfeofeth another to hold of him etc. that lordship that is reserved to him is due by reason of the right which he had in the tenancy when he demised it; and since the right in this tenancy descended from Alice to Isoud etc., therefore this lordship ought to be regardant to the blood of Alice; and therefore we ask you whether this messuage, of which the place where etc., is or is not parcel of the manor of B. which descended from Alice to Isoud.

Friskenev. We have no need to answer to any higher estate than that of Isoud of whose seisin we have avowed.

BEREFORD C.J. The Court will take it as granted by you—and then the parties were adjourned to hear their judgment.

(c) Note that assignment of dower¹ and entry by abatement or judgment do not make degrees.

(d) The essoinor *de servitiis Regis* ought to come to the bar and be seen of the Court that he be a loyal essoinor; and if he be essoinor of several etc.²

¹ The words 'by a disseisor' have probably dropped out here. See I Coke's *Inst.* 386. Case 20 (p. 103) in this volume.

² The meaning of the 'etc.' here is probably that a common essoinor need not be viewed by the Court. See the Note on p. 149.

(e)¹ Replegiare vers vn prior qe remoue le parol par tiel clause. Quia talis distrinxit in feodo suo pro consuetudinibus et seruiciis debitis ore il auow pur rent charge par qi *Heydon* demand iugement de auowre pur ceo qe il est contrariant al cause par quel le parole est remoue, et non allocatur par qi *Heydon* preia aide de sa femme pour ceo que nad riens si noun en droit sa femme et habuit etc.

(f)² Ne iniuste vexes le defendant dit qe le pleintif est son vellein.

Deuon. A ceo ne serrez resceu car autrefoiz en mesme ceste ple fuistz essone vers nous come frank home etc. iugement etc. et non allocatur.

(g)³ Labbe de H. porta briefe de mesne vers R. pour ceo que il ne lui acquitast vers w. et dit que lou il tient de luy certain tenements en fraunk almoigne pour queux seruices il doit lui acquitter etc. la vient w. et lui distreynt etc.

Deuon. Vous ne tenes de nous prist.

Herle. A ceo auerement nauiez quar veies cy vostre fait demene que testmoigne que vous mesmes grauntastes et confirmastes memez les tenements in libera elemosyna etc. iugement si encountre le fait etc. et le fait fuit lie et voil que il grauntast et confirmast predicto Abbati predictum tenementum quod habuit de dono et feoffamento vn D. que [*sic*] fuit de feodo predicti R. a lui et a ses successors en fraunk almoigne et oblige luy et ses heires al acquittance.

Deuon. Vous ne poies dire que les tenements passerent hors de nostre seisin ne de la seisin nostre auncetour et vous ne poies dire que nous eimus purchasse les seignories ne vous ne vnques attournastes a nous iugement etc. et nous ne clamons riens en les seruices ne par reson de ceo fait ne puit estre estraunge de son tenaunt par que.

Toud. Nous voilomus auer que nous teignons de vous et si voiles dire la reuercion vous ne serres resceu encontre vostre fait.

Stanton. ad idem. Par vostre fait demene aues afferme ceo que taunt vaut come seisin de fealte scilicet orisons et chauntries et bais fes de seint esglise des queux seruices vous estez seisi par vostre fait demene etc.

Scrop. Il yad acquitel en le droit entre seignour et tenaunt et vn auter manere dacquittance ou home se oblige par son fait demene en cas

¹ Estoppel, f. 359, case 258. Case 17 (p. 84) in this volume. ² Estoppel, f. 359, case 259. Case 22 (p. 107) in this volume. ³ Mesne, f. 108, case 64. Case 42 (p. 155) in this volume.

(e) *Replegiare* against a prior, who had the action removed ¹ because the writ ran ‘because such an one distrained in his fee for customs and services due.’ The prior now avoweth for rent charge, and *Hedon* thereupon asketh judgment of the avowry on the ground that it is opposed to the reason for which the action was removed ; but the objection was not allowed, and *Hedon* thereupon prayed aid of the plaintiff’s wife, because the plaintiff had naught except in right of his wife, and aid was allowed.

(f) In a *ne iniuste vexes* the defendant said that the plaintiff was his villein.

Denham. You will not be received to say that, for before now, in this same plea, you were essoined against us as against a free man etc. ; judgment etc. The objection was not allowed.

(g) The Abbot of H. brought a writ of mesne against R. for that he did not acquit him against W., and he saith that though he holdeth certain tenements of R. in free alms, for which services he ought to acquit him etc., W. cometh and distraineth him etc.

Denham. You do not hold of us. Ready.

Herle. To that averment you will not get, for see here your own deed that witnesseth that you yourself did grant and confirm these same tenements in free alms etc. Judgment whether against the deed etc.—And the deed was read, and it said that he granted and confirmed to the aforesaid Abbot the aforesaid tenement which he had of the gift and feoffment of one D., which was of the fee of the aforesaid R., to him and his successors in free alms ; and he bound himself and his heirs to acquittal.

Denham. You cannot say that the tenements passed out of our seisin nor out of the seisin of our ancestor, and you cannot say that we have purchased the lordships, nor have you ever attorned to us. Judgment etc. And we claim naught in the services ; and, by reason of this deed, he cannot say that he is a stranger to his tenant, wherefore.

Toudeby. We will aver that we hold of you ; and, if you wish to say the contrary, you will not be received against your own deed.

STANTON J. *ad idem.* By your own deed you have affirmed [that you have a seisin] that is as effective as is the seisin of fealty, to wit, orisons and requiems and [other] benefits of Holy Church ; and of these services you are seised according to your own deed etc.

Scrope. There is an acquittal of right between lord and tenant, and there is acquittal in other manner where a man bindeth himself

¹ *I.e.* from the County Court in Common Bench. See Fitzherbert’s *Natura Brevium*, 69 M.

ou le tenaunt ne tient pas de luy sed conseruare Indemne en ceo cas le tenaunt auera son briefe de Couenaunt par vertue del fait a dereigner lacquitel.

Herle. Il ad graunte par son fait que les tenements sont de son fee et il ad relesse part de ses seruices etc. et ad resceu auters seruices scilicet orisons etc. de quel il est seisi etc.

Berre. Par son fait demene il est lie icy et puy fuit agarde que il lui acquitast etc. pour ceo que il auoit luy charge de lacquitel par son fait demene etc.

(h)¹ Le roy port quare impedit vers larcheuesque de Euerwike de le vicarie de S. par reson que vn Antony Euesque de Durham presenta son clarke al dit vicarie etc. que fuit resceu etc. et puis les temporalites viendrent en sa main par le mort Anthony etc. en quel temps le vicarie se voida et issint appent.

Herle. Cest court ne puit conustre quar S. est deins le fraunchise de Durham.

Scrop. Le roy mesme est partie, que ne doit aillours qe en sa court demesne enplede ne pleder etc.

Bar [sic]. Repoundez oustre.

Herle. Vicarie est chose espirituel, iugement si le court etc.

Berr. Repoundez oustre.

Herle. Apres le mort Antony nous sumus garden des espiritueltes come metropolitan de lieu, issint que nous donomus le vicarie come chose espirituel etc. come il appent etc.

Scrop. Del heure que le roy ad monstre title que Antony presenta come en droit de sa esglise etc. quel droit accrust al roy vacant le Cee, et vous naffirme nul droit en vostre parson que don title de presenter, iugement si etc.

Herle. Le vicarie est chose espirituel, que est seure del auesoun que est le possession que appent al done son leuesque, quar si home auer ij. auowousons dun esglise la ou auaunt naueit que vn que est inconuenient.

Pass. Sir I. de B. recouri lauoweson dun esglise, et apres recouri lauoweson del vicarie de mesme lesglise, et vers mesme le person en ceo court.

Berr. La ou vn auoweson est depart en diuers parcells vt supra, de chescun parcel home auera briefe sil soit distourbe, et ceo est pur ceo que le primer nessauns surde de lay fee : mes si lauoweson soit

¹ Quare impedit, f. 51, case 165. Case 11 (p. 49) in this volume.

by his own deed, in the case where the tenant doth not hold of him, to save him harmless ; and in this case the tenant will, in virtue of the deed, have his writ of covenant, to prove his right to be acquitted [of liability].

Herle. By his own deed he hath admitted that the tenements are of his fee, and he hath released part of the services etc., and he hath received other services, to wit, orisons etc., of which he is seised etc.

BEREFORD C.J. He is bound here by his own deed. And it was afterwards ruled that R. should acquit the Abbot etc. because he had bound himself by his own deed to acquit him.

(h) The King bringeth his writ of *quare impedit* against the Archbishop of York in respect of the vicarage of S., by reason that one Anthony, Bishop of Durham, presented his clerk to the said vicarage etc., who was received etc., and afterwards the temporalities came into the King's hand by the death of Anthony etc., at which time the vicarage became vacant, and so it belongeth [to the King to appoint].

Herle. This Court hath no jurisdiction, for S. is within the franchise of Durham.

Scrope. The King himself is party, and he ought not to be impleaded nor to plead elsewhere than in his own Court.

BEREFORD C.J. Answer over.

Herle. A vicarage is a spiritual thing, judgment whether the Court etc.

BEREFORD C.J. Answer over.

Herle. Upon the death of Anthony we were guardian of the spiritualities as Metropolitan of the place. Wherefore we gave the vicarage as a spirituality etc. as it belonged to us to do.

Scrope. Seeing that the King maketh title by showing that Anthony presented as in right of his church etc., which right accrued to the King *sede vacante*, and you show no right in your own person that entitleth you to present, judgment whether etc.

Herle. The vicarage is a spiritual thing that is severed from the advowson and is possessional and belongeth to the gift of the bishop ; for it would be an incongruity for a man to have two advowsons of a church where before there had been but one.

Passeley. Sir J. de B. recovered the advowson of a church, and afterwards recovered the advowson of the vicarage of the same church, and against the same person, in this Court.

BEREFORD C.J. Where an advowson is divided into divers parcels as above, a man shall have a writ in respect of each parcel if he be disturbed, and this because in its first origin it ariseth from lay fee ;

demande vers luy par vn briefe il pardreit lentiere etc. pur ceo que le seuerauns en le mesne temps fait ne seuera mie laccion ne le ley tener le demaundaunt par que voile pluis dire.

Herle. Nous auomus dit assez, quar le vicarie est chose espirituel, et nous come Ordiner auomus don etc. et nous et ceux que ount estre garden come metropolitan ount don en temps de vacacion par que iugement.

Pass. Tout soit issint que par assent Deuesque et de patron soit fait vn vicare et parson, la ou auaunt ne fuit que vn parson, le auoueson del vicarie demort al patron pur ceo que il est parcel del auoueson del parsonage et lay fee, et de puis que cest vicarie est parcel del grose que est lay fee, ou leuesque ad presente a cest vicarie come de droit de sa esglise, ou le ley entende que il ad toutz iours present come patron et nemie come Ordiner, pur ceo que le possession est lay fee dount cest vicarie surde, et dauter part vicarie ne puit estre fait sauns assent del patron et parson, et coment que a porcion soit admesurre del parsonage cel admesurement ne se freit sauns assent le patron le quel porcion admesurre pur le cure des almes ne chaunge mie le stat le patron, ne tourne mie come possession de lay fee en espirituel que le patron ne doit presenter come auaunt etc. et nous auomus monstre que leuesque est veray patron le quel chose il ne dedit etc. par que iugement etc.

Herle. Vt supra.

Berr. Pur ceo que ne poies dedire que leuesque est patron come de droit de sa esglise que presenta come patron et nemie come Ordiner et donques couient que il auer estat dambideus ceo ne chaunge ley en espirituelte, et vous ne affirme droit en vostre parson si non come metropolitan le quel office ne vous don title a presenter etc. par que etc. par que agarde cest court que le roy eit brief al Euesque etc. non obstante etc.

(i)¹ Terres fueront dones al Alice et B. son baron en fraunkemariage, et ils aueront issue vn C. et B. morust et A. fuit enplede et fist default apres default, par que C. vient et monstre le don etc. et preia destre receu pur ceo que il fuit enheritable par le don et fuit resceu par agarde de court etc.

(k)² Home enfeffe sa file et son baron en fee tayle, le quel file fuit le heire le feffour, issint que bref de Cosinage fuit porte vers

¹ Resceit, f. 99, case 161. Case 43 (p. 159) in this volume. ² Voucher, f. 204d., case 252. Case 25 (p. 118) in this volume.

but if the advowson [of the parcel] be claimed from him by a writ [and he lose], he will lose the whole etc. for a severance made in the meantime ¹ will not sever the demandant's right of action nor the lay tenure. Wherefore say something more.

Herle. We have said enough, for the vicarage is a spirituality, and we, as Ordinary, have the gift etc.; and we and those who, as Metropolitans, have been guardians, have presented during a vacancy of the see. Wherefore judgment.

Passeley. Though it be that the assent of Bishop and patron be necessary for constituting a vicar and parson where before there was a parson only, yet the advowson of the vicarage remaineth to the patron, because it is parcel of the advowson of the parsonage and is lay fee; and since this vicarage is parcel of the whole, which is lay fee, and since the Bishop has presented to this vicarage as of the right of his church, where the law understandeth that he hath alway presented as patron and not as Ordinary, because the possession from which this vicarage ariseth is lay fee; and since, moreover, a vicarage cannot be made without the assent of the patron and parson; and, though a portion be allocated from the parsonage, yet this allocation cannot be made without the assent of the patron, and the allocation of that portion for the cure of souls doth not change the patron's estate, nor turn what he had in possession as lay fee into spirituality so that the patron should not present as before etc., and since we have shown that the bishop is true patron, which is not denied, wherefore judgment etc.

Herle as above.

BEREFORD C.J. Seeing that you cannot deny that the bishop is patron as of the right of his church, that he presented as patron and not as Ordinary—and though he had the estates of both that fact doth not change lay fee into spirituality—and that you assert no right in your own person except as Metropolitan, which office doth give you no title to present, the Court therefore giveth judgment that the King have a writ to the Bishop etc., notwithstanding etc.

(i) Lands were given to Alice and B., her husband, in free marriage. They had issue, one C. B. died and Alice was impleaded and made default after default, wherefore C. cometh and showeth the gift etc. and prayed to be received because he was inheritable by the gift; and he was received by the judgment of the Court.

(k) A man enfeoffed his daughter and her husband in fee tail, the which daughter was the heir of the feoffor. A writ of cosinage was

¹ *I.e.* between purchase of the writ and judgment.

le baroun et sa femme et ils voucherent eus memes et monstrent la cause.

Deuon. Auxibien puit ils ore respoudre come quaunt il veignent en la court par le voucher et non allocatur mes le voucher estut par agarde de Court.

(l)¹ Dowere le tenaunt vouche a garraunte vn enfant en garde de plusors gardens ils fueront somouns de vener a certain iour, deuaunt quel iour vn garden morust, il reuouche les auters et les executours le mort, et stetit vocatio.

(m)² Dowere vers vn tenaunt par fourme destatut marchaunt, qe vouche solonque la fourme del estatut etc. le garden demande pour que il luy vouche le tenant monstre son estat, et fuit agarde qe il garrantireit et rendreit dowere.

(n)³ Dowere vers garden en fait que vouche son lessour.

Deuon. Cesti que vous vouche nad qe chatellet quaunt le garden lest le garde il le lest oue le charge de dowere.

Wilby. Si brief de Dowere soit port vers termor il pourreit voucher et nous nauomus qe terme des ans etc. et hoc non obstante il fuit oustre de voucher.

(o)⁴ Quare impedit vers I. Like Eslite de Deuolen.

Scrop. Lon vous nosmes luy I. Like Eslite de Deuelon il nentra pas par eleccion eins par collacion appostelle par que il deuereit estre nome archeuesque iugment de bref.

Berr. Nient auant que il soit sacre, mes il nest mye sacre par que il deuer estre nosme esliete.

Scrop. Leke est Deane de P. par qi il deuereit estre nome dean etc. iugement de bref.

Huy. Respondes oustre car cest vn bref de transgression, mes si il demandereit terre vers luy il deuer[eit] estre nosme Dean etc.

¹ Voucher, f. 204d., case 253. This has not been identified with any of our reports for the Hilary term.

² Voucher, f. 204d., case 254. This has not been identified with any of our reports for the Hilary term.

³ Voucher, f. 204d., case 255. Case 46 (p. 166) in this volume.

⁴ Briefe, f. 185, case 800. Case 7 (p. 27) in this volume. Fitzherbert attributes this case to the Easter Term of the fifth year.

brought against the husband and his wife, and they vouched themselves, and showed cause.

Denham. They can answer as well now as when they come into Court by the voucher.—The objection was not allowed, and the voucher stood by the judgment of the Court.

(l) Dower. The tenant vouched to warranty an infant in the wardship of several guardians. They were summoned to come on a certain day, before which day one of the guardians died, and the tenant re-vouched the others and the executors of the dead man; and the voucher stood.

(m) Dower against a tenant under the statute merchant, who vouched according to the provisions of the statute etc. The guardian asketh why he voucheth him. The respondent sheweth his estate; and judgment was given that he should warrant and render dower.

(n) Dower against a *de facto* guardian who vouched his lessor.

Denham. He that you vouch hath naught but chattels. When the guardian [*de iure*] leased the guardianship he leased it charged with dower.

Willoughby. If a writ of dower be brought against a termor he can vouch, and we have only a term of years etc.—But notwithstanding this he was ousted from his voucher.

(o) *Quare impedit* against J. Leek, Elect of Dublin.

Scrope. You call him J. Leek, Elect of Dublin, but he did not enter by election but by collation by the Pope, and consequently he ought to be called Archbishop. Judgment of the writ.

BEREFORD C.J. [He ought] not [to be called Archbishop] before he is consecrated; but he was not consecrated, and so was properly called 'elect.'

Scrope. Leek is Dean of Penkridge, and therefore ought to have been called Dean. Judgment of the writ.

STANTON J. Answer over, for this is a writ of trespass; but if land were being claimed from him, then he would have to be called Dean.

PLACITA DE TERMINO PASCHE ANNO REGNI
REGIS EDWARDI FILII REGIS EDWARDI
QUINTO.

1. POMERAY v. RALEYE.¹

I.²

Formedon ou variaunce fut chalenge.

Geoffray Pomerey porta son bref de formedoun deuers Richard de C. et le bref fut tel *Precipe etc. et quod post mortem predictorum H. et M. et H. filii predictorum H. et M. predicto G. filio predicti H. et consanguineo predictorum H. et M. descendere debet etc.* Et puis counta Ceo vous etc. usque ibi etc. de H. et M. descendit le dreyt par la forme a H. com a fiz et heyr de H. a Geoffray qore demande com a fiz et heyr etc.

Pass. Iugement de la variaunce entre bref et Counte. Car par vostre bref vous le fetes Cosin et heyr H. et M. et par vostre Counte vous le fetes cosin³ et heyr H. iugement.

Scrop. Forme de la Chauncerie est tel qen bref de forme de doun homme ne put pas fere le heyr a cely qe ne fut pas seisi ne quident si couent en Counte countant fere descente par my ly descente du pere au fiz com a heyr. Et pur ceo nest pas le bref variaunt du Counte par qi etc. Et dautrepart en bref de Aiel il le fra heyr le aiel et en Counte il fra la descente del aiel a son Pere com a fiz et heyr et de son Pere a ly com a fiz et heyr et vncore est le counte asset bon ausi de ceste part.

Et fut le bref agarde bon et pus voucha etc.

II.⁴

Geffrey le fitz Henri de la Pomery porta vn bref de forme de doun en le descendre vers vn A. et B. sa femme et dit qe vn C. fut seisi et dona a Geffrey de la Pomery et a Margerie sa femme etc. a Henri

¹ Reported by *D*, *G*, and *T*. Names of the parties from the Record.

² Text of (I) from *G*.

³ This appears to be a slip for *fitz*.

(II) from *T*.

⁴ Text of

PLEAS OF EASTER TERM IN THE FIFTH YEAR OF
KING EDWARD, SON OF KING EDWARD.

1. POMERAY *v.* RALEYE.

I.

Formedon, where objection was taken that the writ and counting varied.

Geoffrey Pomeray brought his writ of formedon against Richard of C. ; and the writ ran : ‘ Command etc., and which, after the death of the aforesaid H. and M., and H. son of the aforesaid H. and M., ought to descend to the aforesaid G., son of the aforesaid H. and grandson¹ of the aforesaid H. and M. etc.’ And then he counted in this form. This sheweth you etc. who is there etc. the right descended by the form from H. and M. to H.² as son and heir ; from H. to Geoffrey, that now claimeth, as son and heir etc.

Passesley. Judgment of the variance between writ and counting ; for in your writ you make the claimant grandson and heir of H. and M., and by your counting you make him son³ and heir of H. Judgment.

Scope. The form given by the Chancery is such that in a writ of formedon the claimant cannot be described as heir of one that was never seised⁴ ; it is, nevertheless, proper in counting a descent to make the descent from father to son, as heir. And so the writ doth not vary from the counting ; wherefore etc. And, moreover, in a writ of Ael the claimant will be described as the heir of the grandfather, but in the counting the descent [of the land] will be made from the grandfather to the father, as son and heir, and from the father to the claimant, as son and heir ; and yet the counting will be good, and so here.

And the writ was ruled good ; and then the defendant vouched etc.

II.

Geoffrey the son of Harry de la Pomeray brought a writ of formedon in the *descender* against one A. and B., his wife, and said that one C. was seised and gave to Geoffrey de la Pomeray and to Margery his

¹ Note the use of *consanguineus* with the sense of ‘ grandson.’ *Nepos* is never used with this sense in writs.

² H. died before his parents, and never had seisin, but the right descended through him.

³ See the text.

⁴ *i.e.* he cannot take ‘ after the death ’ of one who was never seised, but must take ‘ after the death ’ of one who was seised.

com a fitz et heir de Henri descendi etc. a G. qore demande com a fitz et heir. Et le bref voleit et quod post mortem predictorum Galfridi de la Pomery et Margerie vxoris eius predicto Galfrido de la Pomery consanguineo et heredi predicti Galfridi de la Pomery et Margerie vxoris eius descendere debet per formam etc.

Pass. Iugement de la variance entre le bref et le count qe par count il vnt fet Geffrei qe demande fitz et heir a Henri et par bref nent eynz cosyn et heir a Geffrei et a Margerie vxori eius etc.

Scrop. Henry ne attendy vnqes etc. car il ne suruesqit pas Geffrei et Margerie pur ceo nest my mestier de fer mencion de luy en bref qest la forme de la Chauncerie iugement etc. Et dautrepart en vn bref de ael vous freez le demandant heir al ael et noun pas au pere et si freez vostre descende del ael a vn tiel com a fitz et heir et de ly al demandant com a fitz et heir et si est le bref et le count bon etc.

Et il voucha et stetit etc.

III.¹

Forme de doun en le descendre ou home ne fit my mencioun en son bref de cely qe vnqes ne tendi estat et hoc non obstante le bref fut agarde bon.

Vn Geffrei porta son bref vers vn William et dit qe vn Iohan fut seissi qi hors de sa seisine enfeffa vn G. de C. et Marie sa femme et les heirs de lour corps etc. et fut le bref tiel. Et quod post mortem eorundem Galfridi et Marie predicto Galfrido filio Henrici consanguineo et heredi predictorum Galfridi et Marie descendere debet etc.

Passeley. En vostre conte auetz fait la descende de Geffrei a Marie de Marie a Henri com a fuitz et Henri qore demande issint par vostre conte lui auet fait heir a Henri et par vostre fait lui auetz fait Cosyn a Geffrei et a Marie et demandoms iugement de la variance.

Scrope. Forme de la chauncerie nest de nomer celui en le bref qe ne tendit vnqes estat mais ore est issint qe henri ne tendist vnqes estat par qi etc. et en conte et en descende couendreit il qe mencion fu fait qe si Geffrei qest demandant ne conte par henri son priere il ne se poet pas faire cosyn a Geffrei et a Marie come il est del bref de ael home ne poet conter par celui qe na tendist vnqes estat et poet estre

¹ Text of (III) from *D*.

wife etc. [The right] descended to Harry as son and heir, and from Harry it descended to Geoffrey, that now claimeth, as son and heir. And the writ ran : ' and which after the death of the aforesaid Geoffrey de la Pomeray and Margery his wife ought to descend to the aforesaid Geoffrey de la Pomeray, grandson and heir of the aforesaid Geoffrey de la Pomeray and Margery his wife, by the form etc.'

Passeley. Judgment of the variance between the writ and the counting ; for in their counting they have made Geoffrey the claimant son and heir of Harry, and not such in their writ, but grandson and heir of Geoffrey and Margery his wife etc.

Scrope. Harry was never seised etc. for he did not survive Geoffrey and Margery, and so it is not necessary to make mention of him in the writ, which is in the form given by the Chancery. Judgment etc. And, moreover, in a writ of Ael you will make the claimant heir of the grandfather and not of the father ; and you will make your descent from the grandfather to such an one as son and heir, and from this one to the claimant as son and heir. And so the writ and the counting are good.

And the defendants vouched, and the voucher was allowed.

III.

Formedon in the descender, where it was objected that one who was in the line of descent but had not lived to have seisin was not named. But the writ was ruled good, notwithstanding this.

One Geoffrey brought his writ against one William and said that one John was seised, and that he, out of his seisin, enfeoffed one G. of C. and Mary his wife and the heirs of their bodies etc. And the writ ran : ' and that after the death of the same Geoffrey and Mary ought to descend to the aforesaid Geoffrey son of Harry grandson and heir of the aforesaid Geoffrey and Mary etc.'

Passeley. In your counting you made the descent from Geoffrey to Mary, from Mary to Harry as son, and to Harry that now claimeth ; and so by your counting you have made him heir to Harry and by your writ you have made him grandson to Geoffrey and to Mary ; and we ask judgment of the variance.

Scrope. The form granted by the Chancery doth not name in the writ anyone who never acquired seisin ; and in this case Harry never acquired seisin, wherefore etc. : but in the count and in the descent such an one must be mentioned ; for if Geoffrey that now claimeth did not count by Harry his father he would not show himself to be grandson to Geoffrey and Mary, as the writ layeth him. In a writ of ael one cannot count of one who never acquired seisin ; but this is to

entendu de frerre et noun pas de pierre qu'en tel cas couent qe home conte par my le pierre tout ne tendi pas estat.

Et pur ceo raiscn le bref fut agarde bon.

Note from the Record.

De Banco Rolls, Easter, 5 Edw. II. (No. 192), r. 90d., Hampshire.

Galfridus filius Henrici de La Pomeray per Petrum Toly attornatum suum petit versus Iohannem de Raley et Iohannam vxorem eius viginti messuagia trescentum et quadraginta acras terre et octo acras prati cum pertinenciis in Northwalepenne¹ vt Ius etc. que Galfridus de Alba Marlia dedit Galfrido de La Pomeray in libro maritaggio cum Maria filia eiusdem Galfridi de Alba Marlia et que post mortem eorundem Galfridi de La Pomeray et Marie prefato Galfrido filio Henrici consanguineo et heredi predictorum Galfridi de La Pomeray et Marie descendere debent per formam donacionis predictae etc.

Et Iohannes et Iohanna per Willelmum de Mershtone attornatum suum veniunt. Et dicunt quod quidam Henricus de Raltie fuit seiscitus de predictis tenementis et illa dedit ipsis Iohanni et Iohanne tenenda eisdem Iohanni et Iohanne et heredibus quos idem Iohannes de corpore ipsius Iohanne procreauerit etc. Et in forma predicta vocat ipsum Henricum inde ad Warantizandum etc. habeant eum hic etc. a die sancti Michaelis in tres septimanas per auxilium Curie etc. Et summoneatur in Comitatu Deuonie etc.

2. BELYNG v. ANON.²

Iohan de Belyng porta son bref de forme de doune etc. Et les queux apres la mort auantditz Henri et Iohan et Iohan fitz mesmes ceus Henri et Iohan alauantdit Iohan de Belyng fitz et heir lauantdit Iohan descendre doit etc.

Scrop. La ou il ad fait en soun bref Iohan fitz et heir Iohan la dut il auer fet Iohan de Belyng Cosyn et heir Henri et Iohan a queux les tenementz furent donez jugement du bref.

Wilb. Il nest my mester qe Iohan suruek Henri et Iohan et tendist estat par quay a luy deuoms fere le demandaunt heir et noun pas a ceux a queux les tenementz furent donez etc.

Spig. Quel estat estendit il.

Wilb. Suruesqy et fut seisi.

Scrop. Vous auez conu qe lissu fu^t seisi et issi le doune comply en sa persone jugement si tiel bref pusse vers nous vsr.

Wilb. Ceo est al accion qe si vous nousts oustes de cesti bref vous

¹ This is part of Walpen in Chale in the Isle of Wight.

² Reported by T.

be understood of a brother, and not of a father, for in such case a man must count of his father even though he never had seisin.

And for this reason the writ was ruled good.

Note from the Record.

De Banco Rolls, Easter, 5 Edw. II. (No. 192), r. 90d., Hampshire.

Geoffrey, son of Harry de la Pomeray, by Piers Toly his attorney, claimeth from John of Raley and Joan his wife twenty messuages, three hundred and forty acres of land and eight acres of meadow, with the appurtenances, in North Walpen as his right etc.; the which Geoffrey of Aumale gave to Geoffrey de la Pomeray in free marriage with Mary, daughter of the same Geoffrey of Aumale, and which after the death of the same Geoffrey de la Pomeray and Mary ought to descend, by the form of the aforesaid gift etc., to the aforesaid Geoffrey, son of Harry, grandson and heir of the aforesaid Geoffrey de la Pomeray and Mary.

And John and Joan come by William of Merston, their attorney, and they say that a certain Harry of Raltie was seised of the aforesaid tenements and gave them to these John and Joan to hold to the same John and Joan and the heirs which the same John should beget of the body of the same Joan etc. And in the form aforesaid he doth vouch the said Harry to warrant etc. They are to have him here etc. three weeks after St. Michael's Day, by aid of the Court etc. And he is to be summoned in the County of Devon etc.

2. BELYNG v. ANON.

John of Belyng brought his writ of formedon etc. [And the writ ran] 'the which after the death of the aforesaid Harry and Joan and John the son of those same Harry and Joan ought to descend to the aforesaid John of Belyng as son and heir of the aforesaid John.'

Scrope. Whereas in his writ he hath made John to be the son and heir of John, he ought to have made John of Belyng grandson and heir of Harry and Joan to whom the tenements were given. Judgment of the writ.

Willoughby. There is no need to do that, for John survived Harry and Joan and acquired estate, and therefore we ought to make the claimant heir to him and not to those to whom the tenements were given etc.

SPIGURNEL J. What estate did he acquire?

Willoughby. He survived [Harry and Joan] and was seised.

Scrope. You have admitted that the issue was seised, and so the gift had effect in his person. Judgment whether you can use this writ against us.

Willoughby. That exception strikes at our right of action, for if

nous tollet accion qe nous ne poymes vser la mortdancestre et pur ceo voyllietz ceo pur respounse.

Herle. Ceste excepcion nest pas al accion qe si vous soez en cas de statut¹ vous auez vostre recouerir la comune ley qe auant lestatut lissue poit vser le mortdancestre et entre sur le disseisine et lentre dum fuit infra etatem et issint vous estes a la comune ley et demandoms jugement de cesti bref qest foundu sur statut qe nest my garranti par estatut.

Scrop. ad idem. A la comune ley auxi com leez feffez aueynt issu il furent en heritez et poeynt alierer mez par estatut nul nest restreint si noun lez primers feffez. Et proue lestatut etc. Ita quod non habeant illi quibus tenementum sic fuerit datum potestatem alienandi mez rien est especi si lez feffez ou lour primer issu lor issu defaille saunz issu par ceste parole herede de corpore huius exitus deficiente saluatur reuersio mez lestatut doune qe nent qe la descente est salue al issue forsque tant soulement qe lez feffez ne pount my alierer iugement etc.

Ber. Celuy qe fit lestatut il supposa le issu en fee taille auxi bien lez feffez estre en cas de statut tanque la taill seit enpury en la qart degree et ceo qil ne fit pas par expresses paroles en lestatut de lez issuez ceo ne fut qe necligens de luy par qai nous ne abateroms mye cesti bref etc.

Herle. Ne dona pas a Henri ael Iohan ne a Iohane sa femme prest etc.

Et alii econtra etc.

3. THE PRIOR OF BRIDLINGTON *v.* GRIMSTON AND OTHERS.²

I.³

Replegiare ou il auowa pur homage et ne lie nule seisine del homage et fut estrange purchacer.

Le priour de Brydelyngtone se pleynt qun Roger atort prist ces auers etc.

*Herle.*⁴ Roger auowe la prise bonè etc. et pur ly et pur Cecilie sa femme par la raison qe le priour teynt de eux vn mees et .xvj.⁵ acres

¹ Statute of Westminster II. cap. i.

² Reported by *B, C, D* (twice), *L, M, P*, and *X*. Names of the parties from the Record.

³ Text of (I) from *D* (second version) collated with *B, C, M*, and *P*. *L* is identical with *D*. The headnote in *C* is: Replegiare ou il auowa pur homage arrere et lya la seisine de service sauer de fealte et de escuage Laudre [*sic*] demanda iugement de pus qe il ne lya seisine del homage et lauowerie fut agarde bon pur ceo qe escuage attret a ly homage.

⁴ *Hedon, B, C, M, P.*

⁵ xvij. *B, C*; x. *M.*

you oust us from this writ you prevent us taking action, for we cannot use the mortdancestor. And you must take this as our answer.

Herle. This exception doth not go to the action, for if you come within the circumstances contemplated by the Statute¹ you can have your recovery by the common law, for the issue, before the statute, could use the writ of mortdancestor or of entry *sur disseisine* or entry *dum fuit infra etatem*, and so the common law is open to you ; and we ask judgment of this writ that followeth the words of the statute but is not warranted by the statute.

Scrope, ad idem. By the common law when the feoffees had issue they had an estate of inheritance and could alienate, and now by the statute the only persons restrained are the original feoffees. And the statute showeth as much. ‘So that they to whom the tenement was so given shall not have the power of alienating it.’ But in the case where the original feoffees have no children, or, if they have, such children die without issue, then by the words of the statute, the reversion is preserved [to the donor] ; but the statute doth not say that the descent is preserved to the issue, but only that the feoffees cannot alienate. Judgment etc.²

BEREFORD C.J. He that made the statute meant to bind the issue in fee tail as well as the feoffees until the tail had reached the fourth degree ; and it was only through negligence that he omitted to insert express words to that effect in the statute ; and therefore we shall not abate this writ etc.

Herle. The donor did not give to Harry, the grandfather of John, nor to Joan his wife, ready etc.

And the other side joined issue.

3. THE PRIOR OF BRIDLINGTON *v.* GRIMSTON AND OTHERS.

I.

Replevin, where the respondent avowed for homage ; but it appeared that he could show no seisin of homage and that he was a strange purchaser.

The Prior of Bridlington complaineth that one Roger did wrongfully seize his cattle etc.

Herle. Roger avoweth the seizure good etc. both for himself and for Cecily, his wife, by reason that the Prior holdeth of them a messuage

¹ Statute of Westminster II. cap. i.

² See the *Introduction*, p. xxv.

de terre ¹dout le² leu etc. par homage fealte et escuage sauer ³qant lescuage court a .xl.s. xx.s.vj.d.ob.⁴ et qant etc. et par les services de .ij.d.ob. par an par fyn de Wapentak des queux services Roger et Cecilie furent seisis par my la mayn le priour come etc. forpris homage et pur homage arrere ⁵si auowe etc.

Scrope. Roger etc. auowent etc. pur homage arrere pur ceo qe le priour tynt de eux et issint apiert qil sount estranges purchasers de ceux services et nad mye lie lauowerie par my seisin del homage pur qel il auowent iugement etc.

Hedon. Nous auoms dit qe nous sumes seisi descuage qatret ⁶a ly⁷ homage iugement etc.

Scrope. Il li ad certeyn forme de auowere en cel cas qe vous dussetz auer dit qe le priour tynt de vostre feffour par les services auantditz et qele fut seisi par my la mayn le priour com etc. et qe vostre feffour vous graunta les services par my qel graunte le priour sattorna del escuage et de les .ij.d.ob. par fyn de Wapentak et de sa fealte et de ces services seisis par my lattornement et donk auower pur les services dout vous ne fuistes ⁸pas seisi sauer pur homage etc.

Hoc non obstante fuyt chace a respoudre pur ceo qe escuage atret ali homage.

Scrope. Le priour tynt ceux tenementz auaunt ditz dun Adam Oadelai ⁹par fealte et par services de .iiij.¹⁰ ob. ¹¹par an¹² par fyn de Wapentak pur touz services le quel Adam graunta ceux services a R. et A.¹³ sa femme et a lour heirs de lour .ij. corps issaunz ¹⁴et sil deuyassent saunz heir etc. qe etc. reuerterent a Adam etc. et il ad auowe com seyngnour qest purchaser en fee simple qar nous auoms¹⁵ atorne a ly com purchaser en fee taille etc. sauer ¹⁶de fealte et de .iiij.ob.¹⁷ etc.

Hedon. Nous conisoms bien qe nous purchasames les services en fee taille et pro hoc non cassatur aduocacio mes ¹⁸

Scrope pria qe cele forme fut entre et fut graunte etc.

Hedon. Qe vous atornastes a nous del escuage et del les .ij.d.ob. des services et qe nous sumes seisi par my cel atornement par my vostre mayn prest etc.

Scrope. Vnques seisi del escuage ne dautre service forsqe de fealte et de .iiij.ob. par fyn de Wapentak prest etc.

Et alii econtra.

¹⁻² en tel, *B, C.* ³⁻⁴ vj.d.ob. qant lescuage court a xl.s. et qant etc. *B, C.*
⁵ Supplied from *B, C,* and *M.* ⁶⁻⁷ From *B* and *C*; *D* has al. ⁸ *B* and *C*
add vnques. ⁹ Badelay, *B, C*; Adelay, *M*; Dadeby, *P.* ¹⁰ .iiij. *C.* ¹¹⁻¹² *P*
omits. ¹³ *D* adds here et E. *B, C, P* and *M* omit. ¹⁴ engendrez, *M.*
¹⁵ Supplied from the other texts. ¹⁶ *M* omits. ¹⁷ mailles, *M.* ¹⁸ *M* omits.

and sixteen acres of land, of which the place etc., by homage, fealty and escuage, to wit, twenty shillings and sixpence halfpenny when the escuage runneth to forty shillings, and when etc., and by the services of two pence halfpenny a year for fine of Wapentake¹; of the which services Roger and Cecily were seised by the hand of the Prior as etc. excepting homage, and for homage in arrear he avoweth etc.

Scrope. Roger etc. avow etc. for homage in arrear on the ground that the Prior holdeth of them; and since it appeareth that they are strange purchasers of these services, and since he hath not in his avowry asserted seisin of homage, for which he avoweth, judgment etc.

Hedon. We have said that we are seised of escuage which attracteth to it homage. Judgment etc.

Scrope. There is a prescribed form of avowry in these circumstances, and you ought to have said that the Prior held of your feoffor by the aforesaid services and that he was seised by the hand of the Prior as etc., and that your feoffor granted you the services, and that in virtue of that grant the Prior attorned himself in respect of the escuage and the two pence halfpenny for fine of Wapentake and of his fealty, and that you are seised of these services by his attornment, and then you should have avowed for the services of which you were not seised, for homage, etc.

But, this notwithstanding, he was forced to answer, because escuage attracteth to it homage.

Scrope. The Prior held these aforesaid tenements of one Adam Oadelai by fealty and by the services of three halfpence a year for fine of Wapentake in acquittal of all services. Those services the said Adam granted to R. and A. his wife and to the heirs of their two bodies issuing; and if they died without heir etc. then the services were to revert to Adam etc.; and Roger hath avowed as a lord that is a purchaser in fee simple, while we have attorned to him as a purchaser in fee tail etc., to wit, of fealty and three halfpence etc.

Hedon. We freely admit that we purchased the services in fee tail.

And the avowry was not quashed by reason of the objection, but—

Scrope prayed that his plea should be enrolled in the words he had used—and this was granted etc.

Hedon. Ready etc. that you attorned to us for the escuage and the services of two pence halfpenny, and that we are seised by this attornment by your own hand.

Scrope. Ready etc. that you were never seised of the escuage or of any service save of fealty and of three halfpence for fine of Wapentake etc.

And the other side joined issue.

¹ *Qu.* Hundred-penny.

II.¹

Auouerie.

Le Priour de Bridelingtone porta Replegiare vers vn Roger qi auowa pur li mesme et C. sa femme pur la resoun qe le priour tent de eus etc. par homage et escuage scilicet [etc.] et par les seruices ij.d.ob. pur fin de Wapentake des queus seruices il furent seisi par etc. for pris le homage et pur le homage arrere etc.

Scrop. Vous nauez lie possession del homage en nulli persone jugement.

Non allocatur pur la seisin de escuage qe attret ali homage.

Scrop. Le priour tint ceus tenemenz de A. de B. par felte et .iiij. ob. a fin de Wapentake pur toz seruices le quel A. granta ceus a R. et C. et as heirs de lor corps issuauntz sauuant la reuersion et vous auez fet auouerie com de estat de fe simple jugement etc.

Non allocatur.

Scrop. Le priour tint de A. vt supra qi granta vt supra par quel grant nous attornames de felte et .iiij.ob. a fin de Wapentake qant as autres seruices vous ne futez vnqes seisi prest etc.

Et alii e contra.

III.²

Replegiare ou purchasor auowa pur homage et ne ne [*sic*] lie seisine de lui ne de son feffor et vnqore fut resceu pur ceo qe il lia sa seisine de lescuage par my sa mayn demesne qe attret a lui homage.

Vn Richard se pleint qe Esteuen de E. et D. sa femme a tort pristront ses auers.

Hedon. Esteuene et Dionisia auowont la prise bone par la reson qe Richard tent de lui vn messuage et vne carue de terre en E. par homage et par foiaute et escuage et par les seruices de .x.d. par an des queux seruices nomement de foiaute rente et escuage il furent seisi par mye la mayn Richard come par mye la main lour verrai tenant et pur ceo qe homage arere il auowent la prise bone.

Scrope. Par lour auowerie il piert qil sont purchaceors de ceux seruices en tant qe il dient simplement en auowant qe nous tenoms de eux deux qe eux deux ne pount joyntement par autre title estre

¹ Text of (II) from X.

² Text of (III) from D (first version).

II.

Avowry.

The Prior of Bridlington brought a writ of replevin against one Roger who avowed for himself and for C. his wife on the ground that the Prior held of them etc. by homage and escuage, to wit etc. and by the services of twopence halfpenny for fine of Wapentake, of which services, except the homage, they were seised by etc., and for the homage in arrear etc.

Scrope. You have not laid the possession of the homage in anyone. Judgments.

But this objection was not allowed, for the seisin of escuage attracteth homage to itself.

Scrope. The Prior held those tenements of A. of B. by fealty and three halfpence for fine of Wapentake for all services; and A. granted those services to R. and C. and to the heirs of their bodies issuing, saving the reversion, and you have made your avowry as of an estate in fee simple. Judgment etc.

The objection is not allowed.

Scrope. The Prior held of A. as above, who granted, as above, by virtue of which grant we attorned for fealty and three halfpence for fine of Wapentake. As to the other services, you were never seised of them. Ready etc.

And the other side joined issue.

III.

Replevin where the purchaser avowed for homage but did not lay seisin thereof in himself nor in his feoffor; yet he was received because he laid seisin of escuage in himself by the hand of the complainant, and escuage attracteth homage.

One Richard complained that Stephen of E. and D. his wife wrongfully seized his cattle.

Hedon. Stephen and Denise avow the seizure good by reason that Richard holdeth of them a messuage and a carucate of land in E. by homage and by fealty and escuage and by the services of ten pence a year, of which services, to wit, of fealty, rent and escuage, they were seised by the hand of Richard, as by the hand of their true tenant; and for this homage in arrear they avow the seizure good.

Scrope. It appeareth by their avowry that they are purchasers of these services, seeing that in avowing they say that we hold of them two, for those two could not jointly be in possession by any other title than

enheritez si noun par purchas desicom il ount auowe ceste prise pur homage et nount pas auowe de lour seisine demesne ne de la seisine celui qi les granta les seruices jugement de la forme.

Hedon. Nous auoms dit qe nous sumes seisi del escuage qe attret a lui homage jugement.

Scrope. Il y ad certeyne forme de auower par celui qest purchacor il ne poet de sa seisine auower ne de la seisine celui qi lour granta les seruices et del hure qil se fait purchacor de seruices et auowe de sa seisine demesne ne de la seisine son feffour jugement.

Et fut dit qil deit outre.

Scrope. Il purchasa ceux seruices a eux et a lour heirs de lour corps engendrez et ount auowe auxi come il fussent soul tenantz en fee et de droit jugement.

Et fu chace a dire outre et dit qil tient de eux par foiaute et par les seruices de .ij.d. par an et qant al escuage vnqes seisi prest etc.

Et les autres le reuers.

Note from the Record.

De Banco Rolls, Easter, 5 Edw. II. (No. 192), r. 206, Yorkshire.

Rogerus de Grymestone in misericordia pro pluribus defaltis.

Idem Rogerus Thomas Frere Willelmus filius Alani Gilbertus Le Prouost et Walterus Denyas summoniti fuerunt ad respondendum Priori de Bridelington de placito quare ceperunt aueria ipsius Prioris et ea iniuste detinuerunt contra vadium et plegium etc. Et vnde idem Prior per attornatum suum dicit quod predicti Rogerus et alii die veneris proxima ante festum sancti Martini anno Regni domini Regis nunc quarto in villa de Crohom in quodam loco qui vocatur vnder Priorgarth ceperunt tres equos ipsius Prioris et eos iniuste detinuerunt contra vadium etc. quousque etc. vnde dicit quod deterioratus est et dampnum habet ad valenciam Centum solidorum Et inde producit sectam.

Et Rogerus et alii per Robertum de Cauz attornatum suum veniunt et defendunt vim et iniuriam quando etc. Et idem Rogerus pro se et aliis aduocat predictam capcionem et iuste. Dicit enim quod idem Prior tenet de ipso Rogero et Iuliana vxore eius duas bouatas terre cum pertinenciis in predicta villa de Crohom per homagium fidelitatem et seruicium duorum denariorum ad finem Wapentagii per annum ad festum sancti Michaelis Et faciendo ad scutagium domini Regis quadraginta solidos cum acciderit septem denarios et quadrantem et ad plus plus et ad minus minus de quibus scutagio fidelitate et seruicio idem Rogerus et Iuliana vt de Iure ipsius Iuliane fuerunt seisiti per manus predicti Prioris. Et quia homagium

purchase. Seeing that they have avowed this seizure for homage and have not avowed it on the ground of their own seisin nor of the seisin of him that granted them the services, judgment of the form.

Hedon. We have said that we are seised of the escuage, the which doth attract homage to it. Judgment.

Scrope. There is a prescribed form of avowry by one that is a purchaser. He cannot avow of his own seisin nor of the seisin of him that granted him the services ; and since the respondents have described themselves as purchasers, judgment whether they can avow in respect of their own seisin or of the seisin of their feoffor.

And he was told to plead over.

Scrope. They purchased these services to themselves, and to the heirs of their bodies engendered, and they have avowed as though they were full tenants in fee and of right. Judgment.

And he was forced to plead over ; and he said that the Prior held of Stephen and his wife by fealty and the services of two pence a year, and that they were never seised of escuage ; ready etc.

And the other side joined issue.

Note from the Record.

De Banco Rolls, Easter, 5 Edw. II. (No. 192), r. 206, Yorkshire.

Roger of Grimston is in mercy for divers defaults.

The same Roger, Thomas Frere, William the son of Alan, Gilbert the provost and Walter Denyas were summoned to answer the Prior of Bridlington of a plea why they took the cattle of the said Prior and them did unjustly detain against gage and pledges etc. And in respect thereof the same Prior doth say by his attorney that the aforesaid Roger and the others upon the Friday next before the Feast of St. Martin in the fourth year of the King that now is in the vill of Crohom¹ in a certain place called the Under Prior Garth three horses of the said Prior did take and them did wrongfully detain against gage etc. until etc. ; whereby he saith that he hath suffered loss and hath damage to the amount of a hundred shillings. And thereof he produceth suit.

And Roger and the others come by Robert of Cauz their attorney and deny force and injury when etc. And the same Roger for himself and the others doth avow the aforesaid seizure good etc. For he saith that the same Prior doth hold of him, Roger, and of Gillian, his wife, two bovates of land, with the appurtenances, in the aforesaid vill of Crohom by homage, fealty and the service of two pence each year on the Feast of St. Michael for fine of Wapentake, rendering towards the escuage of the lord King of forty shillings, when it shall stand at that sum, seven pence and a farthing, and, when more, more, and, when less, less ; and of those services of escuage, fealty and service the same Roger and Gillian were seised as of the right of the said Gillian by the hands of the aforesaid Prior. And because the homage of the aforesaid

¹ *Qu.* Croom.

predicti Prioris eis aretro fuit die capcionis predictae aduocat ipse capcionem predictam nomine suo et eiusdem Iuliane vxoris sue in predicto loco qui est parcella predictarum duarum bouatarum etc. Sicut ei bene licuit etc.

Et Prior dicit quod predictus Rogerus capcionem predictam iustam aduocare non potest in hac parte. Dicit enim quod ipse tenet predicta tenementa de predictis Rogero et Iuliana per fidelitatem et seruicium vnus denarii et oboli ad finem Wapentagii per annum pro omni seruicio. Et quo ad predictum scutagium bene defendit quod predicti Rogerus et Iuliana nunquam fuerunt seisis de scutagio illo per manus ipsius Prioris sicut idem Rogerus asserit. Et de hoc ponit se super patriam. Et Rogerus et alii similiter. Ideo preceptum est vicecomiti quod venire faciat hic a die sancti Michaelis in .xv. dies .xij. etc. per quos etc. Et qui nec etc. Quia tam etc.¹

4. COLEWELL v. PARK.²

I.³

Entre sur disseisine ou il dit qe il recouerist mesme les tenementz par vn bref de eschete en Eyre.

⁴Vn Rauf porta son bref dentre fondu⁵ sur disseisine vers vn Iohan et Iohane sa femme et dit en les queux il nad entre si noun par vn Symound fitz Roger qe de ceo atort ⁶et saunz iugement⁷ disseisa Rauf le pere cesti Rauf etc.

Passeley. La ou il dit qe Symond disseisa soun pere etc. nous vous dioms qe Symond porta son bref deschete vers son pere en leir dexeestre ⁸deuaunt tieux Iustices⁹ par my qel bref il recouery ceux tenementz com sa eschete iugement sil puyse dire qe Symound disseisa ¹⁰soun pere.¹¹

Hedon. Taunt amount qe Symound ne disseisa pas nostre auncestre nous voloms auerer nostre bref.

Passeley. Auoit il cel iugement ou noun.

Hedon. Vous estes estrange a Symound et si nous vousisoms dedire le record vous ne pourrez mye estre partie de voucher record iugement etc.

Passeley. Nous sumes assetz priue qe nous sumes tenaunt etc. et vous auez a nous conu qe nous auoms entre par Symound et lassigne peot pleder lestat son feffour iugement.

¹ Nothing further has been recorded in the matter. ² Reported by *B, C, D, G, M, P, R,* and *T.* Names of the parties from the Record. ³ Text of (I) from *D,* collated with *B, C, M, P,* and *T.* Headnote from *C.* ⁴⁻⁵ Vn bref fut porte sur disseisine, *B, C, M, P.* ⁶⁻⁷ From *B, C, P, M; D* has etc. ⁸⁻⁹ demandaunt deuant Iohan etc. *T.* ¹⁰⁻¹¹ From *T; D* has etc.

Prior was in arrear to them on the day of the aforesaid seizure he doth avow the aforesaid seizure in his own name and in the name of the same Gillian his wife in the place aforesaid which is parcel of the aforesaid two bovates etc. as he was well entitled etc.

And the Prior doth say that the aforesaid Roger cannot in these circumstances avow the aforesaid seizure as just; for he saith that he doth hold the aforesaid tenements of the aforesaid Roger and Gillian by fealty and the service of one penny and a halfpenny a year for fine of Wapentake for all services. And as touching the aforesaid escuage he doth deny that the aforesaid Roger and Gillian were ever seised of that escuage by the hands of the Prior himself, as the same Roger doth assert. And of this he doth put himself upon the country. And Roger and the other do the like. So the Sheriff is commanded that he make to come here in the quindenes of St. Michael twelve etc. by whom etc., and who are neither etc., because both etc.

4. COLEWELL *v.* PARK.

I.

Entry *sur disseisine* where it was said in answer that the alleged disseisor had recovered the tenements in Eyre by a writ of escheat.

One Ralph brought his writ of entry founded on disseisin against one John and Joan his wife, and he said that they had no entry into the tenements save by one Simon, the son of Roger, who wrongfully and in default of judgment disseised thereof Ralph, the father of this Ralph etc.

Passeley. Whereas Ralph saith that Simon disseised his father etc., we tell you that Simon brought his writ of escheat in the Eyre of Exeter against Ralph's father, before such and such Justices, and by that writ he recovered these tenements as his escheat. Judgment whether Ralph can say that Simon disseised his father.

Hedon. That amounteth to saying that Simon did not disseise our ancestor. We will aver our writ.

Passeley. Did Simon get this judgment or not?

Hedon. You are a stranger to Simon, and if we choose to deny the record you could not be a party to vouching it. Judgment etc.

Passeley. We are sufficiently privy [to be able to vouch] for we are tenant etc.; and you have admitted to us that we have entered through Simon, and the assignee can plead the estate of his feoffor. Judgment.

Hedon. Symound disseisa nostre auncestre longtemps deuaunt ceu temps et cel estat continua taunt qil vous enfeffa la quel disseisine demoert vnquore despuny iugement etc.

Passeley. Donqe voletz dire qen le heir¹ etc. nous esteioms seisi auaunt² etc.

Hedon. Symound disseisa nostre auncestre et cel estat continua tauntqe a feffement.

Passeley. Cel la ne poietz dire qe en mesme le Eire vous feistes defaute par qi le petit cape issit a iour etc. symound se prist a cel defaute ou ³vous venistes et deistes qe vous en venaunt vers la ville ou le eire etc. fustes⁴ pris et enprisone a Braunforde etc. ⁵Symound dit qe ceo ne poietz dire qe vous auetz atournee⁶ en le plee par qi Roule fuit quise et troue fuit ⁷qe vous etc. auetz⁸ atournee en le plee par qi seisine de terre fut agarde a Symound et issi recouera il par defaute et issi ⁹venistes vous et respondistes¹⁰ a Symound com tenaunt a¹¹ sauer cele defaute etc. et de ceo vouchoms¹² record si vous voilletz dedire etc.

Hedon. Si vous volletz vouchen record qe de mesme les tenementz nous seroms tost a vn.

*Passeley.*¹³ Si vous voilletz dedire cel recouerer nous voloms auerer par record et si vous voillez conustre le iugement et dire qe noun pas de mesme les tenementz nous voloms auerer par¹⁴ pays.

Hedon eit soun record etc. ideo prest par record etc.

¹⁵Et nota qe si *Hedon* se vst tenu sur la disseisine etc. auant le recouerir qe la partie serreit chasse a respoundre sil ne put alleguer recouerir de plus haut etc.¹⁶

II.¹⁷

Entre ou le tenant alegga vn iugement en son bref deschete porte par le feffor le tenant en leyre etc. vers launcestre le demandant de qi il auoit pris etc.

William de purli et Sibille sa femme porterunt lour bref dentre vers Rauf de colluile et demanderunt vn mes et vn carue de terre ¹⁸oue les apurtenaunces¹⁹ en C. Et dount vn Geffrei soun auncestre

¹ *From T*; the other texts have *bref*. ² et deuant, *M*. ³⁻⁴ il vient et dit qil en cheuachaunt de Loundres vers la Court ou le Eyre fut tenu fut, *T*. ⁵⁻⁶ Et Simond dit qil ne poet ceo dedire mez il dit qil auoit atourne, *T*. ⁷⁻⁸ qil auoit, *T*. ⁹⁻¹⁰ venistes vous a respoundre, *M*; vient il a respoundre, *T*. ¹¹ pur, *C*. ¹² vouche, *T*. ¹³ *Mug.*, *B*, *C*. ¹⁴ *B*, *C*, and *T* add *bon*. ¹⁵⁻¹⁶ Supplied from *T*. ¹⁷ Text of (II) from *R* collated with *G*. Head-note from *G*. ¹⁸⁻¹⁹ *G* omits.

Hedon. Simon disseised our ancestor long before that time, and his estate [so acquired] continued until that he enfeoffed you ; and that disseisin still remaineth unpunished. Judgment etc.

Passeley. Then you want to say that in the Eyre etc. we were seised before etc.¹

Hedon. Simon disseised our ancestor and continued that estate until the feoffment.

Passeley. You cannot say that, for in the same Eyre you made default, and the petty *cape* thereupon issued, and upon the day etc. Simon betook himself to this default, and you came and said that in travelling towards the town where the Eyre etc. you were taken and imprisoned at Brampford etc. Simon said that you could not say that, for you had appointed an attorney in the plea ; and the Roll was thereupon asked for, and it was found that you had appointed an attorney in the plea. Wherefore seisin of the land was given to Simon, and so he recovered by default, and so it was to Simon as tenant that you came and answered to save that default etc. ; and of this we vouch the record, if you want to deny it etc.

Hedon. If you will vouch the record as being in respect of these same tenements we shall quickly be at an issue with you.

Passeley. If you want to deny this recovery we will aver it by record ; and if you admit the judgment but say that it did not refer to these same tenements, we will aver by a jury.

Hedon was granted his record etc., and so offered to aver by record etc.

And you shall note that if *Hedon* had taken his stand on the disseisin etc. antecedent to the recovery the defendant would have been driven to answer, if he could not have alleged a recovery of a higher etc.

II.

Entry, where the tenant alleged a judgment gotten in Eyre by a writ of escheat brought by his feoffor against the ancestor of the claimant, from whom the claimant derived his title.

William of Purley and Sibyl his wife brought their writ of entry against Ralph of Colewell and claimed a messuage and a carucate of land, with the appurtenances, in C., of which one Geoffrey, his ancestor, was

¹ This speech is rendered rather cryptic by the two 'etc.'s. Possibly the meaning is, 'Then you want to say that we had disseised you before the

Eyre of Exeter and were seised ourselves.' Cp. *Hedon's* fourth speech in the second version of the report.

fust seisi en les queux meime cesti rauf nad entre si noun par Simound Rogus ¹qe de ceo atort et sanz iugement disseisi² etc.

Pass. ³Rauf vous dist qe cesti Simound par⁴ qi vous dites qil entra si porta soun bref de eschete vers mesme celi Simound de qi seisine vous auez counte en le Eire de excestre en le counte de deuoun deuant sire salamon de Roucestre et ces compaignons lan ⁵du regne le Roy edward pere nostre seignur⁶ etc. et recoueri meimes ceux tenemenz vers li par iugement par quei nous demandoms iugement si vous poussez cesti bref vers nous vser.

Hedon. Nous voloms auer nostre bref ⁷et qil nous disseisi.⁸

Pass. A ceo neauenderet mie kar nous alleggoms chose qest de record par quei seoms a vne primes du iugement qe nous alleggemes.

Hedoun. Ieo nay pas mester a graunter le ne a dedire kar il esta bien ensemble qe Simound Rogus nous disseisi et qe tiel iugement se fist.

Triking. Primes il vous couient dire chose pur quei vous nauet pas mester a graunter le ne a dedire ou la court le tendra graunte si vous ne ⁹volez autre chose dire.¹⁰

Hedoun. Tant amounte ceo kil diont qil entra par iugement et noun pas par disseisine et nous voloms etc.

Pass. Il ne pount dedire le iugement par quei nous demandoms iugement du bref.

Hedoun. Nous vous dioms ke graunt tens deuant leire dextestre qil allegge qe Simound disseisi nostre pere¹¹ et countinua soun estat tant qil lessa outre.¹²

Pass. Coment¹³ grantet vous le iugement.

Hedoun. Nanil mes ¹⁴puet bien¹⁵ estre qe apres la disseisine par collusioun et par disseite qe vous portastes cel bref cum vous allegget et qe vous auiet iugement par defaute apres defaute de esteindre vostre tort qe vous aueites auant fet mes tiel iugement ne nous¹⁶ barre point.

Passeleue enparla et dist qe Simound porta soun bref en leire etc. vt supra par quei Geffrei¹⁷ de qi seisine vous auez counte fist defaute ¹⁸auant apparance au¹⁹ iour de grant Cape returny il vint en court et voleit auer defendi²⁰ la defaute et dist qe auant²¹ leire comence qil fust a loundres deuant les barounes de la escheker pur diuerse bosoignes et il de illeoques se hasta vers leire issi qe a braunford si fust il desturbe par ewe issi qil ne pout venir a soun iour de plee qil aueit a exestre et ceo tendi deauerer et demanda iugement a quei il fust respoundu

¹ de Reges, *G.* ¹⁻² *G* omits. ³⁻⁴ cely par my, *G.* ⁵⁻⁸ *G* omits.
⁷⁻⁸ Added from *G.* ⁹⁻¹⁰ volet dedire, *G.* ¹¹ *G* adds S. sicom nostre bref
voet. ¹² From *G*; *R* has etc. ¹³ dunqe, *G.* ¹⁴⁻¹⁵ il put estre, *G.*
¹⁶ From *G*; *R* has vous. ¹⁷ *G* adds pere. ¹⁸⁻¹⁹ Added from *G.*
²⁰ defet, *G.* ²¹ qant, *G.*

seised, into which this Ralph hath no entry save by Simon Rogus that wrongfully and in default of judgment did disseise etc.

Passeley. Ralph telleth you that this Simon, through whom you say that he entered, brought his writ of escheat in the Eyre of Exeter in the county of Devon before Sir Solomon of Rochester and his fellows in the [ninth] year of the reign of King Edward, father of the lord etc., against this same Simon of whose seisin you have counted, and recovered these same tenements from him by judgment. Wherefore we ask judgment whether you can use this writ against us.

Hedon. We will aver our writ and that he disseised us.

Passeley. To that you will not get, for what we are alleging is a matter of record. Therefore let us first be at one as to the judgment which we allege.

Hedon. I have no need to admit it or to deny it, for there is nought incompatible in the fact of Simon Rogus having disseised us with that judgment having been given.

TRIKINGHAM J. You must first tell us why you have no need to admit or deny the judgment, or the Court will take it as granted, if you say naught else.

Hedon. It amounteth to this, that they say that Simon entered by judgment and not by disseisin, and we will etc.

Passeley. They cannot deny the judgment. Wherefore we ask judgment of the writ.

Hedon. We tell you that, a long while before the Eyre of Exeter which he allegeth, Simon disseised our father and continued his estate until he leased over.

Passeley. Then you admit the judgment?

Hedon. No; but it may well be that after the disseisin you brought the writ which you allege by collusion and deceit, and got judgment by default after default, in order to conceal the tort which you had previously committed; but such a judgment doth not bar us.

Passeley imparled and said that Simon brought his writ in the Eyre etc. as above, and that Geoffrey, of whose seisin you have counted, made default before appearance, and that on the day of the return of the grand *cape* he came into court and wanted to excuse the default and said that he was in London previously to the commencement of the Eyre, before the Barons of the Exchequer touching divers affairs, and that he hastened thence towards the Eyre and was hindered by the flood at Bramford so that he could not get to Exeter by the day which was appointed for his plea; and he offered to aver that, and he asked judgment. But

qil auoit atturue en le plee au temps de la defaute fet et ceo fust troue par record et pur ceo qil ne pout la defaute sauuer si recoueri simound vers li cum vers tenant par iugement par quei nous nentendoms pas qen countre ceo iugement pusset cesti bref vers nous vser ne dire qe simound fust tenant le iour du iugement depuis qe vostre auncestre respoundu cum tenant.

Hedoun. Seit ¹ceo du² iugement com estre put kar nous le ne grantoms ne dedioms ne lei ne nous chacera a ceo fere car nul home ne puet voucher record si li ou ces auncestres ne seiont partie ³a celi record⁴ et vous nestes pas en ceo cas ⁵par quei demandoms⁶ iugement.

Pass. Nous sumes tenant et aueroms meime les auantages cum auereit nostre feffoure a sauuer nostre tenaunce mes autre serreit si nous fuissoms par voie daccion kar en ceo cas celi qe seuodereit ⁷eider par record il li couent estre partie.

*Hui.*⁸ Dites autre chose ou nous tenderoms le iugement grante.

⁹*Hedoun.* Qe le plee nest pas tiel cum il allegge nous voloms auerer par record.

Ston. Vous granteres qil recoueri par iugement ou dedirret car sil¹⁰ entra par iugement asset li suffit.

Hedoun. Nous voloms auerer qe le plee nest pas tiel cum il allegge kar il dist ke nous pledames cum tenant etc. vt supra.

Triking. Sewet vostre record.¹¹

Notes from the Record.

I.

De Banco Rolls, Easter, 5 Edw. II. (No. 192), r. 50d., Devonshire.

Radulphus de Colewelle per Willelmus Peret attornatum suum petit versus Willelmum del Park et Genoueuam vxorem eius vnum messuagium et vnam carucatam terre cum pertinenciis in Colewelle iuxta Honytone vt Ius et hereditatem suam et in que iidem Willelmus et Genoueuam non habent ingressum nisi per Simonem Roges qui illa eis dimisit qui inde iniuste et sine iudicio disseisiuit Radulphum de Colewelle patrem predicti Radulphi cuius heres ipse est post primam etc.

Et Willelmus et Genoueuam per Iohannem de Holewey attornatum suum veniunt Et defendunt Ius suum quando etc. et dicit [*sic*] quod cum predictus Radulphus petit versus eos predicta tenementa in que iidem Willelmus

¹⁻² dil, G.

³⁻⁴ al iugement, G.

⁵⁻⁶ G omits.

⁷ se voet, G.

⁸ Stant. G.

⁹ Supplied from G. R makes Hedon's speech part of Stanton J.'s.

¹⁰ From G; R has il.

¹¹ G has the following note in the margin at the end of the report: Et nota hic qe tenant de la terre se put eyder par le record a qi son feffor fut partie coment qil ne seit pas partie ne priue et hoc pur ceo qil est par voie de tenance set secus sil fut par voie daccion.

it was said to him in answer that at the time of the default he had appointed an attorney in the plea, and this was found to be so by the record, and, because he could not save the default, Simon recovered against him, as tenant, by judgment; wherefore we do not think that in the face of this judgment you can use this writ against us or say that Simon was tenant on the day of the judgment, for your own ancestor answered as tenant.

Hedon. As to the judgment, let it be as it may, for we neither admit it nor deny it; nor will the law compel us to do this, for no one can vouch a record unless he or his ancestor were party to that record, and you are not in that case; wherefore we ask judgment.

Passeley. We are tenant, and we shall have the same advantages as our feoffor would have had to save our tenancy; but it would have been otherwise if we had been bringing an action; for, in that case, he who would aid himself by a record must be party to it.

STANTON J. Say something else, or we shall take the judgment as granted.

Hedon. We will aver by the record that the plea was not such as he allegeth.

Stonor. You must admit that he recovered by judgment or deny it; for, if he entered by judgment, that is sufficient for him.¹

Hedon. We will aver that the plea is not such as he allegeth, for he said that we pleaded as tenant etc. as above.

TRIKINGHAM J. Sue out your record.

Notes from the Record.

I.

De Banco Rolls, Easter, 5 Edw. II. (No. 192), r. 50d., Devonshire.

Ralph of Colewell, by William Peret his attorney, claimeth from William of the Park and Guenever, his wife, a messuage and a carucate of land, with the appurtenances, in Colewell near Honiton, as his right and inheritance, and into which the same William and Guenever have no entry save by Simon Roges who leased them to them, who wrongfully and in default of judgment disseised Ralph of Colewell, father of the aforesaid Ralph, whose heir this Ralph is, after the first etc.

And William and Guenever come by John of Holewey, their attorney, and deny his right when etc., and he² saith that, whereas the aforesaid Ralph, in claiming from them the aforesaid tenements, allegeth that these same

¹ Stonor seems to be intervening as *amicus curiae*. *G* has *Stonore* in full, otherwise one might have supposed that

the *Ston.* of *R* was a slip for an abbreviated form of *Stanton*.

² *Sc.* Counsel.

Notes from the Record—*continued.*

et Genouewa non habent ingressum nisi per predictum Simonem Roges qui illa etc. qui inde iniuste etc. disseisiuit predictum Radulphum patrem etc. Idem Simon non disseisiuit predictum Radulphum patrem etc. Dicit reuera quod predictus Simon quem predictus Radulphus in brevi suo nominat Simonem Roges vocabatur Simon filius Rogonis et dicit quod idem Simon alias in curia domini Edwardi Regis patris domini Regis nunc coram Solomonem [sic] de Roffe et sociis suis Iusticiariis ipsius domini Regis vltimo Itinere in Comitatu predicto videlicet anno regni sui nono tulit quoddam breue de escaeta versus Radulphum filium Philippi de Colewelle qui fuit pater predicti Radulphi petentis etc. de vno messuagio et tercia parte duarum carucatarum terre cum pertinenciis in predicta villa de Colewelle que quidem tenementa idem Simon filius Rogonis versus ipsum Radulphum patrem etc. per iudicium eiusdem Curie Regis recuperavit. Et dicit quod predicta tenementa nunc petita sunt eadem tenementa que predictus Simon filius Rogonis versus predictum Radulphum recuperavit vnde dicit quod idem Simon intrauit in predictis tenementis per iudicium Curie domini Regis sicut predictum est et non per disseisinam etc. et hoc paratus est verificare etc. vnde petit iudicium etc.

Et Radulphus dicit quod predictus simon filius Rogonis non recuperavit predicta tenementa versus predictum Radulphum patrem etc. coram prefatis Iusticiariis Itinerantibus per Iudicium Curie etc. Sicut predicti Willelmus et Genouewa dicunt. Et de hoc ponit se super recordum rotulorum Iusticiariorum Itineris de tempore predicto Ideo mandatum est Thesaurario et camerariis de Scaccario quod scrutatis rotulis predicti salomonis de tempore predicto transcriptum recordi et processus loquele predictae mittant Iusticiariis hic a die sancti Michaelis in .xv. dies sub pede sigilli scaccarii predicti etc. Ad quem diem veniunt partes predictae per attornatos suos Et Thesaurarius et Camerarii modo mandant quod scrutari fecerunt rotulos Salomonis de Roffe et sociorum suorum in quibus adhuc nichil inueniri potest Ideo sicut prius mandatum est eisdem Thesaurario et Camerariis quod scrutinatis rotulis predicti Salomonis etc. et transcriptum [recordi] et processus etc. mittant hic a die sancti Hillarii in .xv. dies sub pede etc. Idem dies datus est partibus per attornatos suos hic in Banco etc.

Postea ad diem illud venerunt tam predictus Radulphus quam predicti Willelmus et Genouewa Et super hoc Thesaurarius et Camerarii miserunt hic sub pede sigilli Regis de Scaccario transcriptum cuiusdam recordi habiti coram prefatis Iusticiariis itinerantibus in quo continetur quod predictus Simon filius Rogonis recuperavit versus predictum Radulphum filium Philippi de Colewelle vnum messuagium et terciam partem duarum carucatarum terre cum pertinenciis in predicta villa de Colewelle per defaultam predicti Radulphi filii Philippi Et super hoc instanter iidem Willelmus et Genouewa optulerunt se iij. die versus predictum Radulphum de Colewelle

Notes from the Record—continued.

William and Guenever had no entry therein save by the aforesaid Simon Roges, who leased them etc. who thereof wrongfully etc. disseised the aforesaid Ralph, father etc., the said Simon did not disseise the aforesaid Ralph, father etc. For in sooth, he saith, the aforesaid Simon, whom the aforesaid Ralph in his writ calleth Simon Roges, is called Simon the son of Rogo, and he saith that the same Simon at other time in the court of the lord King Edward, father of the lord King that now is, before Solomon of Rochester and his fellows, Justices of the lord King in the last Eyre in the aforesaid county, to wit, in the ninth year of his reign, brought a certain writ of escheat against Ralph the son of Philip of Colewell, that was father of the aforesaid Ralph the claimant etc. in respect of a messuage and the third part of two carucates of land, together with the appurtenances, in the aforesaid vill of Colewell, the which tenements the same Simon, son of Rogo, recovered by judgment of the same King's Court against the said Ralph father etc. And he saith that the aforesaid tenements now claimed are the same tenements which the aforesaid Simon, son of Rogo, recovered from the aforesaid Ralph; in respect of which he saith that the same Simon entered into the aforesaid tenements by judgment of the Court of the lord King as is aforesaid, and not by disseisin etc., and this he is ready to aver etc.; and thereof he asketh judgment etc.

And Ralph saith that the aforesaid Simon, son of Rogo, did not recover the aforesaid tenements from the aforesaid Ralph, father etc. before the aforesaid Justices in Eyre by judgment of the Court etc. as the aforesaid William and Guenever say. And of this he doth put himself on the record of the rolls of the Justices of the Eyre of the time aforesaid. So the Treasurer and Chamberlains of the Exchequer are commanded that they are to have the rolls of the aforesaid Solomon of the time aforesaid examined and are to send to the Justices here in the quindenes of St. Michael a transcript of the record and process of the aforesaid action under the seal of the aforesaid Exchequer etc. Upon which day the aforesaid parties come by their attorneys. And the Treasurer and the Chamberlains now send word that they have caused the rolls of Solomon of Rochester and his fellows to be searched, and that as yet naught can be found in them. So, as before, the same Treasurer and Chamberlains are commanded to have the rolls of the aforesaid Solomon etc. searched and to send a transcript of the record and process etc. here on the quindenes of St. Hilary under the seal etc. The same day is given to the parties here in Bank through their attorneys etc.

Afterwards upon that day both the aforesaid Ralph and the aforesaid William and Guenever came. And thereupon the Treasurer and Chamberlains sent here under the King's seal of the Exchequer a transcript of a certain record had before the aforesaid Justices in Eyre in which it is stated that the aforesaid Simon, son of Rogo, recovered from the aforesaid Ralph, son of Philip of Colewell, a messuage and the third part of two carucates of land, together with the appurtenances, in the aforesaid vill of Colewell, by the default of the aforesaid Ralph, son of Philip. And immediately thereupon the same William and Guenever offered themselves on the fourth day against the aforesaid Ralph

Notes from the Record—continued.

de predicto placito Et ipse non fuit prosecutus Ideo proceditur ad iudicium contra ipsum in principali Ideo consideratum est quod predictus Radulphus nichil capiat per breue set sit in misericordia pro falso clamore etc. Et predicti Willelmus et Genouewa inde sine die etc.

II.

Roll of the Eyre of Devonshire, 9 Edw. I. (Assize Roll No. 185), r. 21d.

Simon filius Rogonis optulit se .iiij. die versus Radulphum filium Philippi de Colewylle de placito vnus messuagii et tercie partis duarum carucatarum terre cum pertinenciis in Colewylle que clamat ut Ius suum etc. Et ipse non venit. Et alias fecit defaltam scilicet die Martis proximo post quindenas Sancti Hillarii postquam conparuit in Curia hic scilicet die Veneris proximo post Octabas sancti Hillarii et petiit visum terre Ita quod tunc preceptum fuit vicecomiti quod caperet predicta tenementa in manum domini Regis. Et quod summoneret eum quod esset hic ad hunc diem scilicet die veneris proxima post festum Purificacionis beate Marie audiendum inde Iudicium suum. Et vicecomes modo testatur quod predicta terra capta est Et quod summonuit eum etc. Et modo venit predictus Radulphus. Et predictus Simon precise capit se ad predictam defaltam quam idem Radulphus fecit predicto die Martis post quindenas sancti Hillarii. Et predictus Radulphus quesitus si sciat sanare defaltam illam dicit quod predicta defalta ei nocere non debet quia dicit quod ipse in veniendo de Londone uersus partes istas impeditus fuit apud Breynford per inundacionem aquarum ita quod die illo hic venire non potuit. Et quia Iusticiarii recordantur quod idem Radulphus habuit attornatum in Curia ista qui quidem attornatus potuit respondisse pro predicto Radulpho ad diem predictum Consideratum est quod predictus Simon recuperet inde seisinam suam versus eum per defaltam Et Radulphus in misericordia.

5. HAYWARD *v.* CARRU.¹I.²

Cui in vita ou la femme dona en fee et puis prist meme cesti en baroun à qi ele dona les tenementz et il aliena come son droit demesne et puis deuia la femme porta sa Cui in vita et le noma par autre noun vt patet infra.

Vne Agneys qe fu la femme Henri le Herward porta son bref vers William et demanda certains tenementz en les queux il nauoit entre

¹ Reported by *B*, *C*, *D* (twice), *G*, *M*, *R*, *T*, and *X*. Names of the parties from the Record. ² Text of (I) from *D* (first version).

Notes from the Record—*continued*.

of Colewell of the aforesaid plea. And he did not appear to prosecute his action. So the Court proceeded to judgment against him on the principal issue; and so it is considered that the aforesaid Ralph take naught by his writ, but be in mercy for his false claim etc. And the aforesaid William and Guenever are to go hence without day etc.

II.

Roll of the Eyre of Devonshire, 9 Edw. I. (Assize Roll No. 185), r. 21d.

Simon, son of Rogo, offered himself on the fourth day against Ralph son of Philip of Colewell, of a plea of one messuage and the third part of two carucates of land, together with the appurtenances, in Colewell, which he claimeth as his right etc. And Ralph did not come. And at other time he made default, to wit, on the Tuesday next after the quindenens of St. Hilary, after he appeared in Court here, to wit, on the Friday next after the octaves of St. Hilary and asked for a view of the land, so that the Sheriff was then commanded to take the aforesaid tenements into the King's hand and to summon Ralph to be here upon this day, to wit, the Friday next after the Feast¹ of the Purification of the Blessed Mary to hear his judgment thereof. And the Sheriff doth now testify that the aforesaid land hath been taken into the King's hand and that he summoned Ralph etc. And the aforesaid Ralph doth now come. And the aforesaid Simon betaketh himself precisely to the aforesaid default which the said Ralph made on the aforesaid Tuesday after the quindenens of St. Hilary; and the aforesaid Ralph being asked whether he could cure that default saith that the aforesaid default ought not to harm him, for he saith that while he was journeying from London towards these parts he was hindered by flood waters at Breynford so that he could not get him here on that day. And because the Justices record that the same Ralph had an attorney in that Court, which attorney could have answered on behalf of the aforesaid Ralph on the aforesaid day, it is considered that the aforesaid Simon do recover his seisin against Ralph by reason of his default, and that Ralph be in mercy.

5. HAYWARD *v.* CARRU.²

I.

Cui in vita, where the woman gave in fee and then took as husband the same man to whom she gave the tenements. He alienated as of his own right and afterwards died. The woman brought her *cui in vita* and described him by another name, as appeareth below.

One Agnes that was wife of Harry the Hayward brought her writ against William and claimed certain tenements in the which [she said]

¹ February 2.

² See the *Introduction*, p. xxiv.

si noun puis le lees qe Henri le Herward iadis son baroun de ceo en fist a vn Iohan a qi etc.

Stonore. Long temps deuant les esposailles vous donastes les tenementz par ceste chartre a vn Henri de R. a lui et a ses heirs a touz iours iugement si vous puissez rens demander.

Frisk. Vous ne nous poetz barrer qe nous portoms cesti bref de temps plus bas sauer de vn lees fait par nostre baroun issint qe la chartre qe vous mettez auant poet estre oue nostre demande.

Stonore. Nous conissoms qe vous fustes seisi et donastes hors de vostre seisine a Henri a toutz iours donques sanz ceo qe vous pussez dire coment droit vous acquist puis contre vostre fait deuets estre ressu.

Frisk. Poet estre qe Agneis dona par ceste chartre et qe ele auoit plus estat qant son baroun aliena donques einz ceo qe vous nous pussetz barrer par ceste chartre il couendreit qe vous feissez vostre respons plus large qe tout fussetz vous celui qe fu partie au fait et donassez pur respons ceo qe vous donetz ore vostre respons ne serroit pas pleyne sanz ceo qe vous deissez qe ele vnqes puis estat nauoit.

Stanton. Vous estes estrange a cel fait qe vous nel vsetz come priue ne come assigne et par tant vous en barre nel poetz vser sanz ceo qe vous iognez a ceo plus.

Stonore. Nous vous [dioms] qe Henri le Hayward et Henri de R. furent vne persone et vous dioms qe Agneis long temps auant les esposailles dona les tenementz a Henri et puis il la esposa et aliena come son droit demesne.

Frisk. Henri nauoit rens mesqe del droit Agneis prest etc.

Et alii econtra.

II.¹

Vn [sic] Maud porta son cui in vita vers vn Iohan etc. et dit qe Iohan nad entre si noun puys le lees qe vn Nicholas de Exham ² fit etc.³ a qi ele etc. ⁴Iohan voucha a garrantie vn R. qe vynt en Court et entra en la garrantie et dit qele ne put accioun auer qele mesme⁵ longe temps eynz ceo qe ele fut espose a Nicholas de Exham ele enfeffa Nicholas le ⁶ Hayward ⁷ par ceste chartre et ⁸ nous sumes

¹ Text of (II) from *D* (second version), collated with *B*, *C*, *M*, *P*, and *T*. ² *D* has fraham here, but Exham elsewhere in the text. *C*, *M*, and *P* have Exham throughout. *B* has Nicholas de E.; *T* has Nicholas de G. ³ *T* adds a vn Richard. ⁴⁻⁵ For this *B* has: Toud. Mesme ceste Maude enfeffa vn Nicholas de H. de ceux tenements. ⁴⁻⁷ For this *T* has: Scrop. Mesme ceste Maude enfeffa vn Nicholas de Herward de ceux tenements longe temps auant ceo qele fut espose a Nicholas de G. ⁶ From the other texts; *D* has de. ⁸ dount, *M*.

he had no entry save after the lease which Harry the Hayward, that was aforetime her husband, made of it to one John, the which [Harry she could not contradict] etc.

Stonore. Long time before the marriage you gave the tenements by this charter to one Harry of R., to him and to his heirs for ever. Judgment if you can claim aught.

Friskenev. You cannot bar us, for we bring this writ of a much more recent time, to wit, in respect of a lease made by our husband ; and so the charter which you tender is quite compatible with our claim.

Stonore. We admit that you were seised and that out of your seisin you gave to Harry for ever. Unless, then, you can show how you subsequently acquired a right, you ought not to be received against your own deed.

Friskenev. It may be that Agnes gave by this charter, and that she acquired a fresh estate after her husband alienated. If, then, you are to be able to bar us by this deed you must make your answer wider ; for though you were he that was party to the deed and gave for answer what you are now giving, your answer would not be complete unless you said that Agnes never subsequently had estate.

STANTON J. ¹You are a stranger, and so you cannot use this deed as you could if you were privy to it, neither can you use it as assignee, [for you do not show that you are an assignee], therefore you are barred by this charter, which you cannot use unless you can say more than you have said.²

Stonore. We tell you that Harry the Hayward and Harry of R. were one person, and we tell you that Agnes gave the tenements to Harry a long while before the marriage ; and Harry afterwards married her, and alienated as being his own right.

Friskenev. Harry had naught save in right of Agnes, ready etc.

And the other side joined issue.

II.

One Maud brought her *cui in vita* against one John etc. and said that John hath no entry save after the lease which one Nicholas of Exham made etc., whom she etc. John vouched to warranty one R. who came into Court and entered into the warranty and said that Maud had no right of action because, a long time before she married Nicholas of Exham, she enfeoffed Nicholas the Hayward by this

¹⁻² The text is obviously very corrupt and any translation can be only conjectural.

tenaunt par nostre garrantie et auoms lestat Nicholas Hayward et demandoms iugement si accioun encountre vostre fet deuers nous puysetz auer.

Fris. Vous ne respounetz nent a nostre bref qe nous auoms dit qe nous furoms seisi com de fee et de droit etc. et qe Nicholas de Exham ¹nostre baroun ²aliena prest etc. et pur ceo il vous couent mettre ³ceo fait auant en evidence a ⁴lenqueste et respoudre a nostre bref et dire qe nostre baroun ne lessa pas ou qe nous nauions rien si noun com femme ⁵nostre baroun ⁶et sur ceo ioindre auerement.

Ston. Ele ne put dedire qe ceo nest son fet et ele ne mustre ren coment ele ⁷auynt ⁸pays a ⁹ceux tenementz de sicom pur ceo fait vous fuistes demys iugement ¹⁰si encountre ¹¹etc.

Heruy. Vous dites qele aliena a Nicholas le Haiward auant ceo qele fut espose a Nicholas de Exham ceo nest pas respouns a son bref qe poet ensemble estre qele aliena et puy fuit seisi etc. ¹²vt supra ¹³et pur ceo respounetz a lour bref etc.

Ston. Ele ad graunte le fait par quel ele se demyst et si ele soit puy auenuz ¹⁴a ly est a dire coment mes pur eser ¹⁵la court ¹⁶nous dirroms verite et dioms qe Nicholas soun baroun fut conu par .ijj. ¹⁷nouns scilicet Nicholas de Exham et Nicholas le Haiward et vous dioms qe ele enfeffa mesme cely Nicholas qe fuit soun baroun long temps auant qil la esposa et ¹⁸pus cel feffement vnqes nauoit ele estat si noun etc. ¹⁹iugement etc.

²⁰*Fr.* Il ad conue qe Nicholas fut soun baroun et nous auoms dit qil aliena iugement etc. ²¹

Heruy. Son dit amounte atant qele nauoit rien si noun com femme pur ceo il couent qe vous sereietz ²²alauerement etc. et qe il vse le fet en evidence etc.

Frisk. Seisi com de fee et de dreit etc. et qe nostre baroun aliena prest etc.

²³*Toud.* Qele nauoit si noun come femme ²⁴pays lesposailles ²⁵prest etc. ²⁶

²⁷Et alii econtra ²⁸etc.

¹⁻² Supplied from *B* and *C*. ³ Moustre, *T*. ⁴ From the other texts; *D* has de. ⁵⁻⁶ Added from *B* and *C*. ⁷⁻⁹ auoit puis ceuz tenementz, *M*.
⁸ auensit, *P*. ¹⁰⁻¹¹ Added from *M*. ¹²⁻¹³ Added from *T*. ¹⁴⁻¹⁶ ceo deuerait venir de eux coment et noun pas de nous mes, *B*, *C*; ceo est a eux a moustre coment et noun pas a nous, *T*. ¹⁵ enseigner, *P*. ¹⁷ diuers, *M*. ¹⁸⁻¹⁹ From *T*; *B*, *C*, and *M* have the same, with slight variations. *D* has qele vnqes puy cel temps de feffement auoit. ²⁰⁻²¹ Supplied from *B* and *C*. ²² tenez, *M*. ²³⁻²⁶ et les autre qele nauoit etc. si noun com femme, *C*, *T*. ²⁴⁻²⁵ Nicholas, *B*. ²⁷⁻²⁸ Ideo, *C*, *M*, *P*; *T* omits.

charter; and we are tenant by our warranty and have the estate of Nicholas Hayward, and we ask judgment whether you can have any action against your own deed.

Friskenev. You answer naught to our writ, for we have said that we are seised as of fee and right etc., and that Nicholas of Exham. our husband, alienated, ready etc.; and for this reason you must tender this deed in evidence to the inquest and answer our writ and say that our husband did not lease, or that we had naught save as wife of our husband; and upon that join averment.

Stonor. She cannot deny that this is her deed, and she tendereth naught to show how she arrived at a subsequent right in these tene-ments, for by this deed you parted with your right. Judgment whether against etc.

STANTON J. You say that she alienated to Nicholas the Hayward before she was married to Nicholas of Exham. That is no answer to her writ; for it may be that she both alienated and was afterwards seised etc., as above; and therefore answer their writ etc.

Stonor. She hath admitted the deed by which she disseised herself, and if she have subsequently regained seisin it is for her to say how. But, for the assistance of the Court, we will tell you the truth of the matter, and we tell you that Nicholas her husband was known by two names, to wit, Nicholas of Exham and Nicholas the Hayward; and we tell you that she enfeoffed this same Nicholas that was her husband a long time before that he married her, and after that feoffment she never had any estate except as etc. Judgment etc.

Friskenev. He hath admitted that Nicholas was her husband, and we have said that he alienated. Judgment etc.

STANTON J. What he saith cometh to this, that she had naught except as wife, and so you must be at the averment etc.; and let him use the deed in evidence etc.

Friskenev. Seised as of fee and right etc., and that our husband alienated. Ready etc.

Toudeby. That she had naught, except as wife after the marriage. Ready etc.

And the other side joined issue.

III.¹

Cui in vita ou ele tauntke ele fut sole aliena a son baroun qe aliena outre leqel fet fut mys auaunt en barre et non potuit vti etc. pur ceo qil ne fut pas priue ne assigne cesti a qi il fut fet et pus fut dit qele ne out ren si noun cum femme ior etc. et alii eontra.

Agnes qe fut la femme Heruy le Hayward porta son Cui in vita vers Ion de Lyttone et dit en les queux il nad entre si noun pus le lees qe Heruy le Heyward a qi lauauntдите Agnes etc. de ceo fit a William de Hasteleye etc. Ion voucha a garrantie William de Hasteleye qe vynt en court et garrantist et dit qe Agnes ne pout ren demander Car ele mesmes taunt ele fut sole enfeffa H. de Croswill de mesme ceus tenementz par qel feffement H. fut seisi longement auaunt ceo qele fut espouse a Heruy le Hayward iugement sien countre vostre fet demene ren pusset demander.

Frisk. Qe vous entrates par nostre baroun ausicom nostre bref suppose iugement.

Stonor. Est ceo vostre fet ou ne my.

Frisk. Ieo nay pas a pleder a cel fet. Car vous dites qe cele fet fut fet tant ele fut sole de queu temps nous ne pernomys my nostre tittle eynz du les qe Heruy nostre baroun fyt tant nous esteymes couert etc. a queu les vous ne respounetz nent iugement etc. *Estre ceo* vous ne dites pas asset pur respouns si vous ne deiset qele dona tant ele fut sole saunt ceo qele ne fut vnqe seisi pus et a ceo ay ieo moun bref de auerer par pays le contrarie par qi depus qe nous auoms counte qe Agnes fut seisi com de fee et de dreit et qe nostre baroun aliena a qi vous ne respounetz pas iugement.

Herui. Vous mettet auaunt vne Chartre laquele fut fet a H. de Croswill a qi vous estes tot estraunge et vous ne mettet pas auaunt fet qe testmoigne qe vous est assigne H. par qi il vous couent prendre garde de ceo qe vous fetes. Car vous ne poet vne chartre vser com vous porret quiteclame.

Stonor. Nous vous dioms qe H. de Croswill et Heruy le Hayward fut vne mesme persone issint qe longe temps auaunt qe Agnes fut espouse a Heruy ele ly enfeffa de mesme ceus tenementz aly et ses heirs issint qe qant Heruy aliena ceo fut de son dreit demene prest etc.

¹ Text of (III) from G.

III.

Cui in vita. The claimant, while sole, alienated to one with whom she afterwards intermarried, and he alienated over†. The claimant's deed was tendered in bar of her claim, but it could not be used because the respondent was neither privy to it nor the assignee of him in whose favour it was made. It was then pleaded that the claimant had no interest in the land, except as wife, after her marriage. And upon this issue was joined.

Agnes that was wife of Hervey the Hayward brought her *cui in vita* against John of Lytton and said that he had no entry into the tenements save after the lease which Hervey the Hayward, whom the aforesaid Agnes etc., made thereof to William of Hastingleigh etc. John vouched William of Hastingleigh to warranty, and he came into Court and warranted, and he said that Agnes could not claim aught, because she herself, while she was sole, enfeoffed H. of Carswell of these same tenements; and H. was seised by this feoffment a long time before she was married to Hervey the Hayward. Judgment whether you can claim aught against your own deed.

Friskenev. That you entered by our husband as our writ supposeth. Judgment.

Stonor. Is this your deed or is it not?

Friskenev. I have not to plead to that deed; for you say that that deed was made while she was sole, and we do not take our title from that time, but from the lease that Hervey our husband made while we were *coverte* etc.; and to that lease you answer nothing. Judgment etc. Further than that, you do not say enough for an answer unless besides saying that she gave while she was sole, you say also that she was never afterwards seised; and I will aver by a jury to the contrary of that, in accordance with my writ. Wherefore, since we have counted that Agnes was seised as of fee and right and that our husband alienated, to which you make no answer, judgment.

STANTON J. You put forward a charter which was made to H. of Carswell, to whom you are a total stranger, and you do not put forward any deed which witnesseth that you are the assignee of H.; and so you must take care what you do, for you cannot use a charter as you could use a quitclaim.

Stonor. We tell you that H. of Carswell and Hervey the Hayward were one and the same person; and that Agnes, long before she was married to Hervey, enfeoffed him of these same tenements, to him and his heirs, so that, when Hervey alienated, these tenements were of his own right. Ready etc.

Frisk. Qe Heruy nauoyt ren etc. quant il aliena si noun cum du dreit Agnes prest etc.

Et ideo ad patriam.

IV.¹

Cui in vita fet la femme mis auant.

Vne Maud porta cui in vita vers vn I. supposant lentre par N. de Foxham son baroun a qi etc.

Ston. Ele mesme par ceo fet enffeffa yn N. Haiward ali et ses heirs iugement si accion contre ceo fet etc.

Fr. Il couent respoundre a nostre bref et al tens de qi nous vsoms cest accion com a dire qe nostre baroun ne lessa pas ou qe nous nauoms ren si noun com femme et vser le fet en euidence ou dire qe pus la mort N. seisi et enfeffe.

Ston. Et si auant les esposailles vous seez demis il couent mostre coment vous seez auenuz et pur eser la courte vous dioms qe ceo est mesme celi N. de qi al ele demande ou ele auant les esposailles li enffeffa par ceo fet.

Et ne fu pas chace de respoundre al fet.

Den. Ele naueit ren si noun com femme.

Alii econtra ad patriam.

Note from the Record.

De Banco Rolls, Easter, 5 Edw. II. (No. 192), r. 109d., Devonshire.

Agnes que fuit vxor Henrici Le Hayward per Simonem Belde attornatum suum petit versus Iohannem de Carru vnum ferlingum terre et dimidium et medietatem vnius messuagii cum pertinenciis in Loueputte vt Ius et hereditatem suam et in que iidem Iohannes et Nicholaus² de Carru non habent ingressum nisi post dimissionem quam predictus Henricus quondam vir ipsius Agnetis cui ipsa in vita sua contradicere non potuit inde fecit Iohanni de Carswell etc.

Et Iohannes per Iohannem le Palmer attornatum suum venit et alias dixit quod ipse solus tenet predicta tenementa absque hoc quod predictus Nicholaus aliquid habuit in eisdem Et Nicholaus hoc idem cognovit etc. Et idem Iohannes vt solus tenens etc. vocat ad Warantizandum Ricardum de Carswell qui modo venit per summonicionem et petit sibi ostendi per quod ei debeat Warantizare etc. et idem Iohannes profert quandam Cartam sub nomine ipsius Ricardi que testatur quod idem Ricardus dedit concessit et carta sua confirmauit predicto Iohanni totum tenementum suum cum

¹ Text of (IV) from X.

² Nicholas is not named at the commencement

of the Record as a party to the action.

Friskeney. That Hervey had naught, when he alienated, save in the right of Agnes. Ready etc.

And so to the country.

IV.

Cui in vita, where the tenant relied upon the wife's deed.

One Maud brought her *cui in vita* against one J. and laid the entry as being by one N. of Foxham, her husband, whom etc.

Stonor. She herself enfeoffed by this deed one N. Hayward, to him and his heirs. Judgment whether action lies for her against this deed etc.

Friskeney. You must answer our writ and for the time to which our action relateth; for example, you may say that our husband did not lease, or that we have naught save as wife, and then use your deed in evidence, or say that you were seised and enfeoffed after the death of N.

Stonor. And if you lost your seisin before the marriage, you must show how you regained it; and, for the assistance of the Court, we tell you that this N., in respect of whom she is now claiming, is the same person whom, before the marriage, she enfeoffed by this deed.

And the claimant was not made to answer the deed.

Denham. She had naught save as wife.

And the other side joined issue.

Note from the Record.

De Banco Rolls, Easter, 5 Edw. II. (No. 192), r. 109d., Devonshire.

Agnes that was wife of Harry the Hayward by Simon Belde, her attorney, claimeth from John of Carru a quarter of a yard-land¹ and half [of a quarter] and the moiety of a messuage, with the appurtenances, in Luppitt as her right and inheritance, into which the same John and Nicholas² of Carru have no entry save after the lease which the aforesaid Harry, aforesaid husband of the said Agnes, whom in his lifetime she could not oppose, made thereof to John of Carswell etc.

And John cometh by John the Palmer, his attorney; and at other time he said that he is sole tenant of the aforesaid tenements and that the aforesaid Nicholas hath naught in the same. And Nicholas did admit this etc. And the same John, as sole tenant etc. doth vouch to warranty Richard of Carswell, who now cometh by summons and asketh to be shown for what reason he ought to warrant etc.; and the same John maketh *profert* of a certain charter in the name of the said Richard that doth witness that the same Richard did give, grant and by his charter confirm to the aforesaid John his whole

¹ A yard-land was sixteen acres.
The claim, therefore, was for six acres.

² See the note on the opposite page.

Note from the Record—continued.

pertinenciis in Scappyngeclyue in manerio de Otery Mohun quod habuit de dono et feoffamento Agnetis de Karswell matris sue Tenendum eidem Iohanni et heredibus suis imperpetuum. Et obligavit se et heredes suos ad Warantizandum etc. Et dicit quod predicta tenementa nunc petita continentur in eadem Carta etc. Et Ricardus bene cognoscit predictam Cartam esse scriptum suum et ei Warantizavit etc. Et defendit Ius suum quando etc. Et dicit quod predicta Agnes nichil Iuris clamare potest in predictis tenementis quia dicit quod eadem Agnes in pura viduitate sua diu antequam predictus Henricus quondam vir etc. ipsam desponsavit feoffavit ipsum Henricum de eisdem tenementis Tenendis eidem Henrico et heredibus suis imperpetuum Ita quod eadem Agnes nunquam postea in vita ipsius Henrici aliquid habuit in eisdem nisi vt vxor eiusdem Henrici. Et de hoc ponit se super patriam. Et Agnes similiter. Ideo preceptum est vicecomiti quod venire faciat hic a die sancti Michaelis in xv. dies xij. etc. per quos etc. Et qui nec etc. ad recognizandum etc. quia tam etc.

Postea in Crastino sancti Martini anno domini Regis nunc septimo veniunt partes predictae hic per attornatos suos et similiter Iuratores de consensu parcium electi Qui dicunt super sacramentum suum quod predicta tenementa fuerunt Ius et hereditas predictae Agnetis et quod predictus Henricus le Hayward dum ipsa Agnes vidua et sola fuit ipsam incubuit et prolem de ipsa suscitavit et fidem suam de ipsa in matrimonio contrahendo prostitit et postmodum per coercionem et compulsionem ecclesiasticam predictus Henricus compulsus fuit ipsam traere in vxorem quod quidem idem Henricus quia clericus fuit renuit facere nisi eadem Agnes ipsum Henricum de predictis tenementis feoffasset per quod predicta Agnes predicto die quo sponsalia predicta celebrata fuerunt fecit ei Cartam feoffamenti de predictis tenementis absque aliqua seisina eidem Henrico inde liberanda unde dicunt precise quod eadem Agnes semper seisinam de predictis tenementis continuavit quousque predictus Henricus tenementa illa alienavit Ideo consideratum est quod predicta Agnes recuperet inde seisinam suam versus predictum Iohannem et idem Iohannes habeat de terra predicti Ricardi ad valenciam etc. Et Ricardus in misericordia etc.

6. ANON.¹

Cui in vita.

Vne femme porta soun cui in vita et le bref voleit quod clamat esse ius suum de dono talis qui ipsam Matildam et A. quondam virum suum inde feoffavit.

Wilbi. La ou ele prent soun title de vn doun fet a soun baroun

¹ Reported by *R.*

Note from the Record—*continued.*

tenement, with the appurtenances, in Scappingelive¹ in the manor of Ottery Mohun which he had of the gift and feoffment of Agnes of Carswell, his mother, to hold to the same John and his heirs for ever. And he bound himself and his heirs to warrant etc. And John saith that the said tenements now claimed are comprised in the same charter etc. And Richard doth fully admit the aforesaid charter to be his deed, and he did warrant John etc. And he doth deny the right of Agnes when etc.; and he saith that the aforesaid Agnes cannot claim any right in the aforesaid tenements, for he saith that the same Agnes in her pure widowhood, a long time before the aforesaid Harry, aforetime her husband, did marry her, enfeofed the same Harry of the same tenements to hold to the same Harry and his heirs for ever, to the effect that the same Agnes never after during the lifetime of the said Harry had aught in the same save as wife of the same Harry. And of this he doth put himself upon the country. And Agnes doth the like. So the Sheriff is commanded that he make to come here in the quindenes of St. Michael twelve etc., by whom etc., and who are neither etc., to make recognition etc., because both etc.

Afterwards on the morrow of St. Martin in the seventh year of the King that now is the aforesaid parties come here by their attorneys, and likewise the Jurors that are chosen by the consent of the parties; and the Jurors upon their oath do say that the aforesaid tenements were the right and inheritance of the aforesaid Agnes, and that the aforesaid Harry the Hayward, while the said Agnes was a widow and sole, lay with her and begat children of her and plighted his troth to her that he would marry her, and that afterwards by ecclesiastical coercion and compulsion the aforesaid Harry was forced to take her as his wife, which thing the aforesaid Harry, because he was a clerk, did refuse to do unless the same Agnes would enfeof the same Harry of the aforesaid tenements; wherefore the aforesaid Agnes upon the aforesaid day when the aforesaid marriage was celebrated did make to him a charter of enfeofment of the aforesaid tenements, without delivering any seisin thereof to the same Harry; and in respect of this the Jurors do say precisely that the same Agnes ever continued her seisin of the aforesaid tenements until that the aforesaid Harry did alienate these same tenements. So it is considered that the aforesaid Agnes do recover her seisin thereof against the aforesaid John; and the same John is to have of the land of the aforesaid Richard to the value etc. And Richard is in mercy etc.

6. ANON.

Cui in Vita.

A woman brought her *cui in vita*, and the writ ran 'which she claimeth to be her right by the gift of such an one who thereof enfeofed this same Maud and A., aforetime her husband.'

Willoughby. Whereas she taketh her title from a gift made to her

¹ *Qu.* Shapleigh.

et ali nous vous dioms qe soun baroun nauoit rien par ceo doun iugement du bref car ele put auer bon bref quod clamat esse ius suum de dono talis qui ipsam inde feoffaut par quei etc.

Scrop. Ceo nest pas respouns en abatement de nostre bref car si nous vousissoms vostre dist trauerser tiel issue ne serreit pas receuable de court par quei etc.

Wilbi. Nous le mettoms auant au bref car si le bref fust sanz title serreit mauueis et abatable par mesme la resoun la ou le title est faus.

Lambert. Vous ne serrez pas rescu atrauerser en tot mes si vous volez dire qe le baroun ne la femme ne aueint rien du doun etc. homme vous receuera bien.

Wilbi. Qe le baroun ne la femme naueient rien del doun celi etc. prest etc.

7. MANBY *v.* HAY AND BEDWIN.¹

I.²

Quare impedit ou fut dit qil fuit chapel annexe a vn Eglise.

Rauf de Maneby³ porta soun quare impedit vers⁴ Roger de la Haye et Wauter de Bodewende⁵ et dit qaly apent a presenter a la eglise de Thornhamby⁶ etc. pur la raison qe le maner de Thornhamby a qi lauoweson est apendaunt fut en la seisine vn hubard⁷ de Wantige⁸ qen son temps presenta vn soun clerk S. par noun qe a soun presentement etc. en temps de pees etc. ⁹par qi mort etc.¹⁰ de hubard descendi le maner a qi lauoweson etc. a Maude com a fille et heir de Maude a Thomas com a fitz et heir le quel Thomas dona la maner a qi¹¹ lauoweson est apendaunt¹² a Rauf et a ces heirs et issint apent a ly a presenter¹³ et il ly destorbe¹⁴ etc.

Pass. Sire¹⁵ Wautor dit qil est persone et personee¹⁶ de la eglise de attone dount ceo qe vous apelez eglise si est Chapele et annexe a sa eglise de Attone¹⁷ et demandoms iugement si vers ly tieu bref igise. *Roger*¹⁸ vous responde et dit qil est patroun de la eglise de acton a qi ceo qe vous apelez eglise si est Chapele¹⁹ apendaunt et²⁰

¹ Reported by *D* (twice), *M*, *P*, *R*, and *X*. Names of the parties from the Record.

² Text of (I) from *D* (second version), collated with *M* and *P*. ³ Molyn, *M*; Momby, *P*. ⁴⁻⁵ Wauter de Wedewyn et I. del Haye, *P*. ⁶ From *M*, *D* has Torwarby; Thorthamby, *P*. ⁷⁻⁸ From *M* and *P*. ⁹⁻¹⁰ *M* and *P* omit. ¹¹⁻¹² From *M* and *P*; etc. *D*. ¹³⁻¹⁴ *M* and *P* omit. ¹⁵ Supplied from *M* and *P*. ¹⁶ en persone, *M*, *P*. ¹⁷ Hattone, *P*. | ¹⁸ Iohan, *M*, *P*. ¹⁹⁻²⁰ Supplied from *M* and *P*.

husband and herself, we tell you that her husband never had aught by this gift. Judgment of the writ, for she can have a good writ running 'which she claimeth to be her right by the gift of such an one who thereof enfeofed her.' Wherefore etc.

Scrope. This is not an answer in abatement of our writ; for, if we wanted to traverse what you say, such issue would not be receivable by the Court. Wherefore etc.

Willoughby. We put it forward in objection to the writ, for, just as the writ would be bad and abatable if it showed no title, so it is equally bad where the title shown is a false one.

TRIKINGHAM J. You will not be received to a complete traverse of the writ, but if you want to say that neither the husband nor the wife ever had aught by the gift etc., you will certainly be received.

Willoughby. That neither the husband nor the wife had aught by this gift etc. Ready etc.

7. MANBY *v.* HAY AND BEDWYN.¹

I.

Quare impedit, where it was said that the church in respect of which the writ was brought was not a church, but only a chapel annexed to a church.

Ralph of Manby brought his *quare impedit* against Roger of the Haye and Walter of Bedwyn and said that it belonged to him to present to the church of Thorganby² etc. by reason that the manor of Thorganby, to which the advowson is appendant, was in the seisin of one Hubert of Vaux, who in his time presented his clerk, one S. by name, who upon his presentation etc. in time of peace etc., by whose death etc. The manor to which the advowson etc. descended from Hubert to Maud as his daughter and heir; from Maud to Thomas as her son and heir. This Thomas gave the manor to which the advowson is appendant to Ralph and to his heirs; and so it belongeth to Ralph to present, and he³ disturbeth him etc.

Passeley. Sir, Walter saith that he is parson imparsonnee of the church of Aughton,⁴ of which that which you call a church is a chapel [of ease], and is annexed to his church of Aughton; and we ask judgment whether such a writ lieth against him. Roger maketh answer to you and saith that he is patron of the church of Aughton, to which that which you call a church is a chapel appendant and annexed to

¹ See the *Introduction*, p. xxii.

³ *I.e.* Roger, the principal defendant.

² Thorganby is about 9 miles S.E. of York.

⁴ Aughton is about 2 miles S.S.W. of Thorganby.

annexe¹ a la Eglise de Attone et qe est sauoweson et fut Chapele² le iour du bref purchace et demandoms iugement du bref.

Denom. Ceo nest pas respouns qar nous auoms fet cel Eglise appendaunt au maner etc. dount nous sumes seisi par qi ceo nest pas assetz a defere nostre title.

Pass. Nous vous dioms qe ceo est Chapel annexe³ al eglise de⁴ acton et vous estes purchasour du maner etc. et vous dioms qen le temps vostre feffour ceo fut Chapele etc. et vncore est et demandoms iugement du bref etc.

Malm. Nous auoms pris nostre title⁵ de ceo presentement de la seisine⁶ Hubard qe fuist seisi du Maner etc. et presenta come a eglise en temps le Roi Henri qest pûys temps de memore et auoms fet la descente lineament etc. tauntqe a nostre feffour le quel nous dona la maner etc. et issi auoms fet ceo qe vous apele Chapele eglise et par presentement de verrei patroun et nentendoms mye si vous ne poietz⁷ defere nostre title qatiel auerement deuetz auenir.

Toud. Vous estes purchasour et vous ne poietz plus haut⁸ pleder⁹ si noun lestat vostre feffour et vostre estat demesne¹⁰ et depus qe nous tendoms dauerer qe ceo est Chapele et fut Chapele le iour du bref purchace et tut le temps Thomas¹¹ vostre feffour nous demandoms iugement si a vous¹² qe estes¹³ purchasour auoms mestre a plus¹⁴ haut respoundre.¹⁵

*Scrope Iustice.*¹⁶ Il est allegge qe ceo est eglise appendaunt au maner dount il est seisi et ensement allegge presentement de verroi patroun et¹⁷ fet descente de li qe presenta touz iours en le saunk taunt qa Thomas¹⁸ soun feffour¹⁹ dount si cely qest ore persone ad les profites de cel eglise par extorciouns et soun predecessour deuaunt li et²⁰ soun feffour ne myst vnqes debat quidetz vous par taunt defere soun title qest en le dreyt²¹ et cel appendaunt qil alegge²² par vostre simple dit si vous ne dietz autre chose certes noun.

²³Ad alium diem²⁴ *Passeley* nous vous dioms qe ceo fut Chapele en temps Thomas le²⁵ feffour et en le temps soun pière Ael et besael et nous et nos aunecestres lauoms tenuz pur Chapele annexe²⁶ al eglise de²⁷ Actone ces .l. aunz prest etc.

Denom. Vnquore nauetz mye assetz dit a defere nostre title.

¹⁻² la qele est de sauoweson et fut, *M, P.* ³⁻⁴ From *M* and *P*; a, *D.*
⁵⁻⁶ From *M* and *P*; *D* has del presentement vn. ⁷ puissez, *M, P.* ⁸ auant, *M, P.* ⁹⁻¹⁰ qe vostre estat demesne et lestat vostre feffour, *M, P.* ¹¹ Supplied from *M* and *P.* ¹²⁻¹³ Supplied from *M* and *P.* ¹⁴⁻¹⁵ auant, *M, P.* ¹⁶ *Justice* supplied from *M* and *P.* ¹⁷ *M* and *P* add il ad. ¹⁸ Added from *M* and *P.*
¹⁹⁻²⁰ donques si cely ensement ne, *M, P.* ²¹⁻²² par cel appendaunce qe vous alleggez, *M, P.* ²³⁻²⁴ *M* and *P* omit. ²⁵ soun, *M, P.* ²⁶⁻²⁷ From *M* and *P*; a, *D.*

the church of Aughton, and that it is of his advowson, and was a chapel on the day of the purchase of the writ; and we ask judgment of the writ.

Denham. That is no answer, for we have laid this church as appendant to the manor etc., of which we are seised; and therefore what you say is not sufficient to defeat our title.

Passeley. We tell you that this is a chapel annexed to the church of Aughton, and you are purchaser of the manor etc.; and we tell you that this was a chapel etc. in the time of your feoffor and still is, and we ask judgment of the writ etc.

Malberthorpe. We have base dour title to this presentation on the seisin of Hubert that was seised of the manor etc. and presented as to a church in the time of King Harry, which is within the time of memory, and we have made the descent lineally etc. down to our feoffor who gave us the manor etc.; and so we have shown that what you call a chapel is a church filled by the presentation of the true patron; and, unless you can avoid our title, we do not think that you ought to get to such an averment.

Toudeby. You are a purchaser and you cannot plead a higher estate than that of your feoffor and your own; and since we offer to aver that this is a chapel and was a chapel on the day of the purchase of the writ and through all the time of Thomas your feoffor, we ask judgment whether we need give higher answer to you that are a purchaser.

SCROPE J. It is alleged [by the plaintiff] that this is a church appendant to the manor of which he is seised, and he also allegeth presentation thereto as by true patron, and he maketh an uninterrupted descent in the blood from the last person who presented down to Thomas, his feoffor. ¹If, then, the present parson of the church of Aughton and his predecessor have taken the profits of the church of Thorganby by extortion, would Ralph's feoffor have raised no objection? And since he did not, do you think that you are going to defeat his title, which is in the right, and this appendancy which he allegeth, by your simple assertion unsupported by aught else? ²

Upon another day—

Passeley. We tell you that this was a chapel in the time of Thomas, the feoffor, and in the times of his father, grandfather and great-grandfather; and we and our ancestors have held it as a chapel annexed to the church of Aughton these fifty years. Ready etc.

Denham. You have not yet said enough to defeat our title.

¹⁻² The text is apparently corrupt here. The above possibly represents the sense of the Justice's remark.

Berr. Il ad lie soun respouns plus fort qar il ad plede au temps¹soun feffour et recitaunt² vt supra.

Denom. Nous auoms fet cele eglise apendaunt et nous auoms lie nostre accioun et nostre dreyt par presentement vt supra et vous ne mustrez nul fet qe testmoigne vostre dit ne qe defet lapendaunce³ et vous ne mustrez qe vous auietz⁴ presente⁵ come a chapele eynz dites qe vous auez presente ala eglise de atton qe nest pas en debat et issi nauetz defet mye nostre accioun par presentement ne par fet celi qe pcut⁶ la pendaunce defere iugement et prioms bref al Euesqe.

Berr. Il dit qil ad presente ala Eglise de Attone a qi ceo est⁷Chapele apendaunt et qe son presentement est ressu et institut de Euesqe en cel Eglise et en la Chapel auxi com apendaunt dount sil ad presente a ceo qest⁸ gros nad il mye presente a ceo qest apendaunt quasi diceret sic et de puyz qe son presente prent les issues de la Chapel apendaunt ala eglise dount il est institut.

Denom. Nous auoms mustre qe ceo est eglise et qe hubard presenta come a eglise qi estat⁹nous auoms¹⁰ et vous ne mustrez mye qe vous auetz presente a ceo seueralment¹¹ com a Chapele ne vous ne moustretz fet de cely qe poer enauoit de seuerer cel apendaunce du maner dount nous sumes seisi ne vous alleggez¹² prescripcioun de temps qe¹³ceo est Chapele¹⁴ eynz grauntez en teisaunt le presentement hubard et rehercea vt supra qe soun presente fut ressu et institut etc. par qi mort la eglise est ore voide ne vous ne poietz allegger plenartie en cel eglise eynz est vncore vacaunt iugement et pria bref al Euesqe.

Pass. Vous estes estraunge¹⁵ purchasour et vous ne poietz dedire qe ceo fuit apendaunt¹⁶al Eglise etc. en le temps vostre feffour et en temps soun piere ael et Besael et depuis qe¹⁷ vous nestes mye heir du saunk et demandoms iugement si a ceo bref deuez estre resceu.

Hedone. Nostre feffour put recouerer cest auowesoun¹⁸ par le deren presentement pur ceo qil est en le saunk¹⁹iugement si nous qe sumes purchassours et auoms soun estat ne deuoms estre resceu a nostre quare impedit.²⁰

¹⁻² nostre feffour iesques a taunt, *M, P.* ³ la dependance, *M, P.* ⁴ nauez, *M.*
⁵ *M* and *P* add auxi. ⁶ puisse, *M, P.* ⁷⁻⁸ *M* and *P* omit. ⁹⁻¹⁰ vous auez, *M.* ¹¹ Supplied from *M* and *P.* ¹² moustrez nul, *M, P.* ¹³⁻¹⁴ cele Chapel ad este annexe etc. *M, P.*
¹⁵ Added from *M* and *P.* ¹⁶⁻¹⁷ From *M* and *P.* *D* has en le temps vostre feffour ne vostre etc. et. ¹⁸ From *M* and *P*; avowerie, *D.* ¹⁹⁻²⁰ From *M* and *P*; *D* has par qi nous purchasour qauoms son estat poms vsrer le quare impedit.

BEREFORD C.J. He hath made his answer stronger, for he hath pleaded to the time of the plaintiff's feoffor—and he rehearsed it as above.

Denham. We have laid this church as appendant, and we have supported our action and our right by showing presentation, as above; and you produce no deed that witnesseth what you say nor that disproveth the appendancy, and you do not show that you have presented as to a chapel, but you say that you have presented to the church of Aughton, which is not disputed; and so you have not met our action by proving a presentation nor by any deed that can disprove the appendancy. Judgment, and we pray a writ to the Bishop.

BEREFORD C.J. Roger saith that he hath presented to the church of Aughton, to which this is a chapel appendant; and that his presentee was received and instituted by the Bishop to this church and to the chapel as appendant to it. If, then, he have presented to the whole, hath he not presented to that which is appendant, since his presentee takes the issues of the chapel appendant to the church to which he is instituted?—inferring that he had.

Denham. We have shown that this is a church and that Hubert presented to it as to a church, and we now have his estate; while you do not show that you have presented to it severally as to a chapel, nor do you show any deed made by anyone who had power to sever this appendancy from the manor of which we are seised, nor do you allege that this is a chapel by prescription of time, but you tacitly admit the presentation by Hubert—and he rehearsed, as above, that Hubert's presentee was received and instituted etc.—by whose death the church is now empty, and you cannot allege plenarty in this church, but it is still empty. Judgment, and he prayed a writ to the Bishop.

Passeley. You are a strange purchaser, and you cannot deny that this chapel was appendant to the church etc. in the time of your feoffor and in the time of his father, grandfather and great-grandfather; and, since you are not heir of the blood, we ask judgment whether you ought to be received to this writ.

Hedon. Our feoffor could recover this advowson by assize of *darrein presentment*, because he is in the blood. Judgment whether we that be purchasers and have his estate ought not to be received to our *quare impedit*.¹

¹ The *quare impedit* is a writ that lieth for him that hath purchased a manor with the advowson thereto belonging. The *darrein presentment* lieth only where a man or his ancestor hath

formerly presented. Where a man may have an assize of *darrein presentment* he may have a writ of *quare impedit*, but not contrariwise; and see Britton II, p. 201 (edit. Nichols).

Toud. Sire il [dit] qe soun feffour put recouerer par le dereyn presentement en taunt fuit il hors et cel auowesoun seuere du maner la demandoms sil qest purchasour ¹put ren² recouerer dount³ son feffour ad accioun depuys qe soun dit testmoigne qe soun feffour fut hors a qi accioun vncore est reserue si nul yfut [iugement] si a teu bref deit estre resceu.

Huntingdon. Si cesti bref ⁴seit abatu⁵ nous sumes saunz recouerir qar nous ne poms demaunder Chapele par nul bref pur ceo qe Hubard de qi nous pernomms nostre tittle presenta ⁶a eglise et⁷ mye come a Chapele iugement sil put cest bref abatre de puy quil ne put autre doner.

Toud. Ieo ⁸vous ne vous dorra⁹ mie bref qar ieo di qe vostre feffour nauoit qune accioun la qel il ne put doner ne vendre eynx [*sic*] vnqore ¹⁰li demoert sil ascun auoit¹¹ et vous estes estraunge et ¹²noun pas du¹³ saunk iugement ¹⁴si vous deuez estre resceu.¹⁵

Berr. Il vous¹⁶ dit qe soun feffour put recouerir par le dereyn presentement par qi il ¹⁷dit qil ad¹⁸ recouerir par le quare impedit et ¹⁹ceo est la prouee dount²⁰ ieo pose ²¹qil portast²² son dereyn presentement ²³vers vous²⁴ et deit qe soun auncestre presenta la dereyn persone serra ceo respouns a ly²⁵ ceo qe vous auetz vncore dit certes nanil mes sachez bien qe lassise serra prise demeyngtenant.

Pass. Sire ceo est verite qar il fuit en le saunk issi qe par auenture ²⁶nostre respouns ne serreit pas respouns²⁷ a ly mes celi est estraunge purchasour qe ne put autri accion pleder.

²⁸*Ing.* Accion poet destre en le saunk mes accion ne put estre iames vendu ne done.²⁹

*Heruy.*³⁰ Vous nestes mie en ceo cas com ceo fut en vn replegiare ou vous deuetz pleder lestat vostre feffour de la commune de pasture et vncore en vn replegiare vous plederez lestat vostre feffour ³¹et lestat³² ael et besael par la ou il nauoit vnqes bestes³³ pur mettre en la commune.

Pass. Sire ceo est verite ieo porroi pleder plus haut en vn replegiare qe lestat moun feffour pur derayner la³⁴ commune pur ceo qe ieo su seisi du soil a qi la commune est apendaunt et moun feffour en ceo

¹⁻² puisse, *M*, *P*.

³ depuis qe, *M*, *P*.

⁴⁻⁵ abatist, *M*, *P*.

⁶⁻⁷ auxi com a Eglise et ne, *M*, *P*. ⁸⁻⁹ ne vous dorray, *M*, *P*. ¹⁰⁻¹¹ il demoert si nule y seit, *M*, *P*. ¹²⁻¹³ nient en le, *M*, *P*. ¹⁴⁻¹⁵ From *M* and *P*; etc. *D*.

¹⁶ Added from *P*. *M* has the same, with ne deuez for deuez. ¹⁷⁻¹⁸ auera, *M*, *P*.

¹⁹⁻²⁰ veez si la proue qe, *M*; *P* has the same, omitting si. ²¹⁻²² qe soun feffour porte, *M*, *P*. ²³⁻²⁴ Added from *M* and *P*. ²⁵ *M* adds a

respoudre; *P* adds oster. ²⁶⁻²⁷ From *M* and *P*; *D* has nous respoudroms.

²⁸⁻²⁹ Supplied from *M* and *P*; *M* reading iug[ement] instead of *Ing.*, and making the speech part of the previous one; while *M* reads peut pleder descende instead of poet destre. ³⁰ Staunton, *M*, *P*. ³¹⁻³² Added from *M*, *P*. ³³ From

M and *P*; *D* has estat. ³⁴ ma, *M*, *P*.

Toudeby. Sir, he saith that his feoffor could recover by the *darrein presentment* now when he is out of possession and this advowson is severed from the manor ; and we ask if he that is a purchaser can recover aught in respect of which his feoffor hath right of action ; since his own statement witnesseth that his feoffor, to whom right of action, if any right there be, is reserved was out of possession. Judgment whether he ought to be received to such a writ.

Huntingdon. If this writ be abated we are without recovery, for we cannot claim it as a chapel by any writ, for Hubert, from whom we take our title, presented as to a church and not as to a chapel. Judgment whether he can abate this writ, seeing that he can give us no other.

Toudeby. I will give you no writ, for I tell you that your feoffor had but one action, the which he could neither give nor sell, and he still hath it if anyone have ; and you are a stranger and not of the blood. Judgment whether you ought to be received.

BEREFORD C.J. He telleth you that his feoffor could recover by the *darrein presentment*, and that he himself, consequently, hath recovery by the *quare impedit*. I test it this way. Suppose his feoffor brought his *darrein presentment* against you, and said that his ancestor presented the last parson, would anything that you have said up to now be any answer to him ? No ; and the assize would be taken straightway.

Passeley. Sir, that is true, because, he being of the blood, it may be that our answer to the plaintiff would be no answer to him ; but the plaintiff is a strange purchaser who cannot use another's right of action.

Ingham. The right of action may descend in the blood, but it cannot be sold or given.

STANTON J. It is not here as in a replevin where you ought to plead the estate of your feoffor. In common of pasture and also in replevin you can plead the estate of your feoffor, and the estate of his grandfather and great-grandfather, even if such an one never had any cattle to put on to the common.

Passeley. Sir, it is true that in a replevin I can plead higher than the estate of my feoffor in order to prove my right to common because I am seised of the soil to which the right of common is appendant, while

cas ne put auer accioun ¹de puis qe ieo suy seisi del soil² a cel commune dereiner³ mes ei il ne deit estre resceu⁴ pur ceo qil est purchasour ⁵et soun feffour ad accioun par cas a recouerir cel Eglise la quel accioun il ne peut a ly granter iugement sil deit estre resceu.⁶

⁷*Denom.* Il dit qe nostre feffour ad accioun mes autre accioun ne ⁸poet il⁹ auer si noun a recouerir lauowesoun del Eglise la quele est apendaunte au maner et noun pas a recouerir la Chapel et en tant il ad graunte lauowesoun estre apendaunte au maner et il nous dona le maner oue les apurtenaunces a qi cel auowesoun est apendaunt et vous ne ¹⁰dedites pas la seisine Hubert ne soun presentement¹¹ de qi nous pernoms nostre tittle iugement et prioms bref al Euesqe.

Toud. Vt prius et se tint sur ceo la quele est purchassour et ne mye en le saunk et soun feffour auoit accioun a dereyner etc. pur ceo qe il feut ¹²hors etc. la qele¹³ accioun ne poit a ly estre graunte ne purchasour del accioun pleder par qi il demanda iugement si a cely qe fut purchassour auoit il¹⁴ mester plus haut a respoudre.

Berr. Ceo qe vous pledez est pur hoster le purchassour de soun quare impedit et doner le drein presentement soun feffour certes nanil par qi me semble qe vous auez mestre a pleder plus haut etc.¹⁵

¹⁶Lenqueste prise a terme de Pasche anno .vij. qe dit qele fut Chapele du temps dount etc. et predictus Radulphus nichil recepit per breue suum etc.¹⁷

II.¹⁸

Quare Impedit. Nota ou homme demande auoweson de eglise come appendent au manoir et se fait tittle de presentement ascun de ses auncestres come appendent et lautre le cleime come chapelle annexe a vne autre eglise sanz ceo qil puisse moustrer qil ad este annexe par prescripcion de temps ou moustrer coment il ad este seure del manoir par consideracion ou en autre manere il ne oustra my lautre daccion.

Vn Renaud porta son quare impedit vers Roger de la Haye et Wautier Wedewynde et conta qe atort lui disturba presenter couenable persone al esglise de Ormestone qe a sa doneision apent et pur ceo atort qe a lui apent a presenter et par la raison qe vn Hubert de Vaux fu seisi del manoir de G. a qi etc. en temps de pees en temps le Roi

¹⁻² Supplied from *M* and *P*. ³ Supplied from *M* and *P*. ⁴ From *M* and *P*; etc. *D*. ⁵⁻⁶ From *M* and *P*. For this *D* has corruptly etc. et si soun feffour par cas reserue la quel accioun il ne put a li graunter iugement etc. ⁷⁻¹⁵ From *P* collated with *M*. For this *D* has

Denom ad alium [diem] esglise en temps Huberd prest etc.

Scrope. Chapele en temps Huberd et du temps dount il nad memorie prest etc.

⁸⁻⁹ poez, *M*. ¹⁰⁻¹¹ moustrez pas a la seisine hubert ne a soun presentement, *M*, *P*. ¹²⁻¹³ la al, *M*. ¹⁴ le, *M*. ¹⁶⁻¹⁷ *M* and *P* omit. ¹⁸ Text of (II) from *D* (first version).

my feoffor cannot, in those circumstances, have an action to claim that right of common, because I am seised of the soil ; but here the plaintiff ought not to be received, because he is a purchaser and his feoffor hath, it may be, his action to recover this church, the which action he cannot grant to the plaintiff. Judgment whether he ought to be received.

Denham. He saith that our feoffor hath his action, but the only action he can have is one to recover the advowson of the church that is appendant to the manor, and not one to recover the chapel ; and so they have admitted that the advowson is appendant to the manor. Hubert gave us the manor, together with the appurtenances, to which this advowson is appendant, and you cannot deny Hubert's seisin nor the fact that he presented, and it is upon these that we base our title. Judgment ; and we pray a writ to the Bishop.

Toudeby, as before, and he relied upon the fact that the plaintiff was a purchaser and not of the blood ; and his feoffor had a right of action to claim etc., but because that he was out etc., that right of action could not be transferred to the plaintiff, nor could a purchaser plead such right of action. Wherefore he asked judgment whether he need give a higher answer to one that was a purchaser.

BEREFORD C.J. Your pleading goeth to ousting the purchaser from his *quare impedit* and giving the *darrein presentment* to his feoffor. We cannot accept that, and so it seemeth to me that you must plead higher etc.

The inquest was taken in the Easter Term of the seventh year and it was found that this was a chapel from a time of which etc. and the aforesaid Ralph took naught by his writ etc.

II.

Quare impedit. Note where one claimeth the advowson of a church as appendant to a manor and baseth his title upon the fact that an ancestor presented to the church as appendant, and the defendant saith that the church in demand is a chapel annexed to another church, without being able to show that it is such by prescription of time or that it hath been severed from the manor by purchase, he will not be able to bar the plaintiff from his action.

One Reynold brought his *quare impedit* against Roger of the Haye and Walter Bedwyn ; and he counted that they wrongfully disturbed him from presenting a fit person to the church of [Thorganby] that belongeth to his gift ; and wrongfully because it belongeth to himself to present by reason that one Hubert of Vaux was seised of the manor of G. to which etc. in time of peace in the time of the King Harry etc.

Henri etc. qe a cel temps a mesme la eglise presenta vn son Clerk Iohan de C. qe par son presentement fu ressu etc. par qi mort etc. de Hubert descendi le manoir a qi etc. a Maud de Maud a Thomas quel Thomas dona le manoir a [sic] G. ensemblement oue lauowesoun a Renaud et issint apent a lui a presenter et issint lui destorbe a tort.

Herle defendi et dit qe Roger de la Haye fust auowe del eglise de Hattone a qele eglise cest qil apele ore eglise est chapele et fut le ior du bref purchace et demanda iugement du bref en droit de Wauter bodewynde nous vous dioms qil est persone de Hattone a qi ceste qil apele eglise est chapelle et ne clamons riens en lauowesoun demandoms iugement si cel bref vous nous puissets vser.

Malmerthorpe. Nous auoms conte del presentement Hubert et auoms fait la descente lineament a Thomas par qi nous clamons estat et auoms [conte] del presentement come a eglise a qi vous ne responetz iugement.

Herle. Nous ne pledoms pas al presentement mes al abatement de bref et dioms qe ceo qe vous appelletz eglise fu chapelle ior du bref purchace et a Thomas par my qi vous clametz estat et ceo nous voloms auerrer.

Malmerthorpe. Nous sumes en lestat Thomas nostre feffour et auoms mesme laccioun qe Thomas auoit et desicome nous auoms pris nostre title de Hubert qe presenta come a eglise a qi vous ne responetz nient et issint nest pas vostre respouns pleyne nous demandoms iugement.

Herle. Vous estes estrange purchacer et prenez vostre accioun de celui a qi vous estes tout estrange et ne poetz clamer plus haut estat qe vostre feffour nauoit et desicome nous auoms moustre qe Thomas par my qi vous clamez estat nauoit rens en lauowesoun mes fut hors de possessioun en tant qe en son temps il fut chapell annexe al eglise de Attone et laccioun qil auoit a remener chose en son primere estat ne poet a nous passer par alienacioun iugement si nous eioms mester a vous gastes estrange plus haut pleder.

Malmerthorpe. Nous auoms conte del presentement Hubert qe presenta al eglise son Clerk par my qi mort [etc.] nous auoms fait la descente de Maner a qi etc. a Thomas nostre feffour et lauowesoun est chose nent maniable de qi ne purrioms auer autre seisine qe presenter a procheyne voidaunce qest ore ne vous ne mousterez coment la eglise fut seure du manoir de G. dont nous sumes seisiz.

who at that time presented to the same church one John of C., his clerk, who on his presentation was received etc., by whose death etc., the manor to which etc. descended from Hubert to Maud and from Maud to Thomas; and this Thomas gave the manor of G., together with the advowson, to Reynold, and so it belongeth to him to present, and so the defendants do wrongfully disturb him.

Herle defended, and said that Roger of the Hays was patron of the church of Aughton, to which church this that is now described as a church is a chapel [of ease], and was so on the day the writ was purchased; and he asked judgment of the writ. As to Walter Bedwyn, we tell you that he is parson of Aughton to which this that is called a church is a chapel [of ease], and we claim naught in the advowson, and ask judgment whether you can use this writ against us.

Malberthorpe. We have counted of the presentation by Hubert and we have made the descent lineally to Thomas, through whom we claim estate, and we have counted of the presentation as a presentation to a church; and to this you make no answer. Judgment.

Herle. We are not pleading to the right of presentation but to the abatement of the writ, and we say that that which you call a church was a chapel on the day of the purchase of the writ and in the time of Thomas, through whom you claim estate, and we are ready to aver it.

Malberthorpe. We have the estate of Thomas our feoffor, and we have the same right of action as Thomas had; and since we have taken our title from Hubert who presented as to a church, and you make no answer to that, the answer you give is not a complete answer to us, and so we ask judgment.

Herle. You are a strange purchaser and you claim to derive your right of action from one to whom you are altogether a stranger, for you can claim no higher estate than your feoffor had; and since we have shown that Thomas, through whom you claim your estate, had naught in the advowson, but was out of possession, inasmuch as in his time it was a chapel annexed to the church of Aughton, and the right of action which he had in his former estate to recover aught cannot pass to you by alienation, judgment whether we need plead higher to you that are a stranger.

Malberthorpe. We have counted of the presentation of Hubert who presented to the church his clerk through whose death etc. We have made the descent of the manor to which etc. to Thomas our feoffor; and the advowson is not a tangible thing and we can have no other seisin of it than by presenting to it at the next vacancy, which is the present one; and you do not show how the church was severed from the manor of G. of which we are seised.

Scrope Iustice. Il ount pris lour tittle de Hubert qe presenta al eglise son Clerk par my qi mort etc. et tout fut il issint qe vne persone ou .ij. ou .iij. de Attone vssent emportez les profitz del eglise de G. par purprise sanz ceo qe vous pussetz alleger prescripcion de temps etc. ou moustrez qe la eglise fut du manoir de G. seure et fait annexe al eglise de Attone par consideracion ieo le tenk tote voies voides qe tout eietz vous presente al eglise de Actone cel presentement ne vous doune pas possessioun del eglise de G. qest dautri possessioun par qi riens qe vous eietz vnqore dit vous ne moustrez pas qe Thomas fut hors de possessioun qe del hure qe Hubert presenta la dereyn persone il ne poet sanz son fait de hors sanz ceo qe vous vssetz presente vn autre a cele eglise etc.

III.¹

Quare impedit.

Roger de Crei porta soun quare impedit vers Thomas de E. et Walter de Bedeuind etc. et dist qe a li apent a presenter par la reson qe vn Hubert de vas fust seisi del maner de Kirkele oue les apurtenaunces a quel maner lauowesoun del esglise de H. est appendant et presenta vn son clerk Ion par noun qe a soun presentement seit receu etc. de Hubert descendi le dreit de ceu maner ensemblement oue la uowesoun a Alice com a file et heir de alice a thomas de thomas a thomas qe hors de sa seisine eneffa rogger del maner auantdist a qi la uowesoun del esglise auantdist est appendant issi apent a li a presenter etc.

Westcote. La ou rogger porte cest bref vers Thomas de E. etc. Thomas vous respount et dist qil est auowe del esglise de attone et dist qe ceo qil appelle esglise de H. ceo est Chapele annexe a la esglise de attone dount il est auowe et demandoms iugement de cesti bref qe suppose qele est esglise.

Malm. Quei respount lautre.

West. Walter vous dist qil est persone del esglise de attone et ceo qil suppose estre esglise si est Chapele annexe al esglise dount il est persone etc. iugement etc.

Malm. Sire vous auez bien entendu coment nous auoms pris nostre tittle de vn Thomas qe fust seisi del maner a qi la uoweson etc. et comment il nous eneffa etc. et auoms dist qe vn Hubert de vas

¹ Text of (III) from *R.*

SCROPE J. They have taken their title from Hubert who presented to the church [of Thorganby] his clerk through whose death etc. ; and though it were that one or two or three parsons of Aughton had tortiously taken the profits of the church of Thorganby, yet, unless you could show prescription of time etc. or show that the church had been severed from the manor of Thorganby and annexed to the church of Aughton by purchase, and though, also, you may have presented to the church of Aughton, I think it quite clear that the fact of that presentation doth not give you possession of the church of Thorganby, which is the possession of another ; and therefore by naught that you have yet said do you show that Thomas was out of possession, for since Hubert presented the last parson he cannot be out except in virtue of his own deed, unless you have presented another [parson] to this church etc.

III.

Quare impedit.

Roger of Crei brought his *quare impedit* against Thomas of E. and Walter of Bedwyn etc. and said that it belongeth to him to present by reason that one Hubert of Vaux was seised of the manor of Kirkele, with the appurtenances, to which manor the advowson of the church of H. is appendant, and he presented his clerk, one John by name, who, upon his presentation, was received etc. The right to this manor, together with the advowson, descended from Hubert to Alice as his daughter and heir ; from Alice to Thomas ; from Thomas to Thomas, who out of his seisin enfeoffed Roger of the aforesaid manor to which the advowson of the aforesaid church is appendant ; and so it belongeth to Roger to present etc.

Westcote. Whereas Roger bringeth this writ against Thomas of E. etc., Thomas answereth you and saith that he is patron of the church of Aughton ; and he saith that that which Roger calleth the church of H. is a chapel annexed to the church of Aughton, of which he is patron ; and we ask judgment of this writ that supposeth it to be a church.

Malberthorpe. What answer doth the other [defendant] make ?

Westcote. Walter telleth you that he is parson of the church of Aughton, and that that which Roger supposeth to be a church is a chapel annexed to the church of which he is parson etc. Judgment etc.

Malberthorpe. Sir, you have heard how we have taken our title from one Thomas that was seised of the manor to which the advowson etc., and how he enfeoffed us etc., and we have said that one Hubert

auncestre Thomas fust seisi du maner a qi lauowesoun etc. et presenta cum apendent et coment nous auoms lie lauowesoun com appendant al maner descendi de auncestre a auncestre taunt qe a Thomas nostre feffour et il ne moustrent rien coment lauowesoun est seure du maner ne diont coment ceo est fet chapele ne annexe pus le temps Hubert qe presenta cum appendant ne il ne ount pas desdist la disturbance par quei demandoms iugement de eux cum de noun defendus et prioms bref al Euesque.

Hle. Et vous ne poet plus haut estat prendre qe del estat vostre feffour mes nous voloms auer qen tens vostre feffour fust ceo chapele et nient esglise auxi en temps le predecessour qe ore est etc. et demandoms iugement si vous poet demander cum auowesoun de esglise ceo qe fust chapele en temps vostre feffour.

Malm. Nous ne pernoms mie nostre title tant soulement de lestat nostre feffour einz del estat Hubert auncestre nostre feffour qe presenta etc. cum appendant al maner lequel descendra [*sic*] nostre feffour etc. le quel ne pout la seisine de la uowesoun deliuerer cum il pout del demesne si noun gaiter la premiere voidaunce et vous dioms ke ceo est la procheine voidaunce apres le presentement Hubert par quei demandoms iugement.

Toud. Accioun ne puet estre grante etc. mes nous auoms dist qen tens vostre feffour fust ceo chapele et nient esglise et si accioun ne fust en sa persone a dereiner ceste auowesoun cum esglise auxi cum ceo fust en le temps soun auncestre a vostre dist ceste accioun ne puet a autre estre grante et demandoms iugement etc.

Scrope Iustice. Il ad dist qe vn Hubert auncestre soun feffour presenta etc. vt supra et dist qe ceo est la procheine voidaunce apres ceu presentement et vous ne dites pas qil i aueit nul autre presentement pus cele presentement einz dites qe ceo est chapele annexe etc. en taunt grantet vous qe la esglise nad este voidaunce pus le primer presentement Hubert etc. et estrange purchasur ne put plus naturellement presenter si noun a la procheine voidaunce par quei etc. E dautre part cele qe deit estre chapele et nient esglise si couient qil die treis Choses sauer qil est assent de patroun et de ordinarie ou qil allegge prescripcioun de tens et vous ne moustrez nul de ceo treis par quei etc.

Westcote. Sire nous vous dioms qe ceo fust chapele en tens soun feffour et si soun feffour vst este disturbe a la procheine voidaunce

of Vaux, ancestor of Thomas, was seised of the manor to which the advowson etc. and presented to it as appendant, and how we have laid the advowson as appendant to the manor that descended from ancestor to ancestor down to Thomas our feoffor; and they do not show how the advowson became severed from the manor, nor do they say how this church became a chapel or annexed since the time of Hubert, who presented to it as appendant; neither have they denied the disturbance. Wherefore we ask judgment of them as putting in no defence, and we pray a writ to the Bishop.

Herle. You cannot take a higher estate than the estate of your feoffor, and we are ready to aver that in the time of your feoffor as well as in the time of his predecessor this that is now etc. was a chapel and not a church. And we ask judgment whether you can claim the advowson as of a church of that which was a chapel in the time of your feoffor.

Malberthorpe. We do not derive our title solely from the estate of our feoffor, but [also] from the estate of Hubert, the ancestor of our feoffor, who presented etc. as appendant to the manor, the which [manor] descended to our feoffor etc. who could not deliver seisin of the advowson as he could of the demesne,¹ but we must wait for the first avoidance, and we tell you that this is the next avoidance after the presentation by Hubert; wherefore we ask judgment.

Toudeby. Right of action cannot be transferred etc.; and we have said that in the time of your feoffor this was a chapel and not a church, and even if a right of action to claim this advowson as the advowson of a church, as, according to what you say, it was in the time of his ancestor, reposed in his person, that right of action could not be granted to another; and we ask judgment etc.

SCROPE J. He hath said that one Hubert, ancestor of his feoffor, presented etc. as above, and he saith that this is the first vacancy after that presentation, and you do not say that there hath been any other presentation after that presentation, but you say that this is a chapel annexed etc., and so admit that the church hath not been vacant since the former presentation by Hubert etc., and a strange purchaser naturally cannot present until a vacancy next occur, wherefore etc. And besides this, he that saith that this is a chapel and not a church ought to say three things, that it is so by the assent of the patron and ordinary, or he should allege prescription of time,² and you do none of these three things, wherefore etc.

Westcote. Sir, we tell you that this was a chapel in the time of his feoffor, and if his feoffor had been disturbed at the last vacancy he could

¹ Because an advowson is not a *chose maniable*.

² The meaning is obvious, though it might have been better expressed.

illi couendreit auer porte soun quare impedit ou soun drein presentement et issi auer recoueri par voie de lei par quei nous entendoms ceo qe fust en la persone soun feffour acerte et nent cler ne puet pas estre en sa persone cler par voie de lei et demandoms iugement.

Toud. ad idem. Si soun feffour vst este disseisi del maner a qi etc. et vst grante lauowesoun a vn autre ia par mie soun grante ne puet lautre auer accion a derreiner ceste auowesoun pur ceo ke laccion qe fust en la persone la feffour etc. ne puet a autre estre grante.

Scrop Iustice. Si si [*sic*] la persone del esglise de attone eit acroche a li les dimes del esglise de H. par extorcoun ou autre vient [*sic*] par suffrance de patroun issi qil est fet ceo qe fust auant esglise estre chapele annexe a sa esglise si il ne put moustrer tite de patroun coment ceo est fet chapele par confirmacion de Eueske ou autre tite de dreit kar autrement ne puet ceo estre fet chapele qe auant fust esglise.

IV.¹

Quare impedit.

Rauf de Mowbray porta quare impedit vers Walter de Bodwyn [et] I. de la Hay et counta qe vn Hubert fu seisi du maner de T. a qei etc. et presenta B. par qi mort etc. de Hubert descendi etc. a A. com a fiz et heir de A. a B. com a fiz de B. a C. com a fiz le quel C. dona le maner a qi etc. a Rauf qi ore se pleint issint apent etc.

Pass. Walter est person enpersone del esglise de Hattone dunt ceo qil apelle esglise est chapelle iugement si cel bref vers li gise. I. vous dit qil est patron del esglise de Hattone dunt ceo est chapelle et il apelle ceo esglise iugement du bref.

Den. Nous auoms fet la esglise apendaunt al maner de quel nous sumes seisi a qei il ne respounde pas iugement.

Pass. Ceo est chapelle de H. et fu en tens de vostre feffor et en tens le pere et ael et Besael vostre feffor et fu .xl. anz auant ceo bref porte iugement du bref.

Den. Ceo nest pas assez de pus qe vous ne dedites pas qe Hubert presenta com a esglise B. par qi mort etc. si vous ne pussez defere lapendaunce par fet de celi qi dreit aueit ou qe vous pussez mostre qe vous auez seueralment presente a ceo com a chapel.

¹ Text of (IV) from X.

have brought his *quare impedit* or his *darrein presentment*, and so have recovered by course of law ; wherefore we think that that which was not certified and clear in the person of his feoffor cannot be clear in his own person through process of law, and we ask judgment.

Toudeby ad idem. If his feoffor had been disseised of the manor to which etc. and had granted the advowson to another, such other would not afterwards have a right of action to claim this advowson by virtue of that grant, because the right of action that was in the person of the feoffor etc. could not be granted to another.

SCROPE J. ¹ If the parson of the church of Aughton had taken by extortion or otherwise the tithes of the church of H., by sufferance of the patron, so as to make what had previously been a church a chapel annexed to his own church, he must show an authority from the patron, setting out how this church was made a chapel with the confirmation of the Bishop, or some other sufficient authority, for in no other way can that which was previously a church be made a chapel.²

IV.

Quare impedit.

Ralph of Mowbray brought a *quare impedit* against Walter of Bedwyn and J. of the Haye and counted that one Hubert was seised of the manor of T. to which etc., and presented B., by whose death etc. From Hubert [the manor] descended to A. as his son and heir ; from A. to B. as his son ; from B. to C. as his son ; the which C. gave the manor to which etc. to Ralph that now complaineth ; and so it belongeth etc.

Passeley. Walter is parson imparsoner of the church of Aughton, of which that which the plaintiff calleth a church is a chapel [of ease]. Judgment whether this writ lieth against him. J. telleth you that he is patron of the church of Aughton of which this is a chapel, and the plaintiff calleth it a church. Judgment of the writ.

Denham. We have laid the church as appendant to the manor of which we are seised, and to this he doth not answer. Judgment.

Passeley. This is a chapel to [the church of] H., and it was such in the time of your feoffor and of the father and the grandfather and the great-grandfather of your feoffor, and for forty years before this writ was brought. Judgment of the writ.

Denham. That is not sufficient, since you do not deny that Hubert presented B., by whose death etc., as to a church, unless you can defeat the appendancy by a deed of someone who had the right, or unless you can show that you presented to this severally as to a chapel.

¹⁻² The text is obviously corrupt, but the translation probably gives the sense of the Justice's speech.

Berr. Sil eit presente al gros de qi etc. et son clerk eit pris les profiz de la chapelle donques ad il assez presente a la chapelle.

Den. Nostre feffor recouureit par dreyn presentement sil vst le maner del estat son auncestre pur ren qe vous auez dit et nous auoms son estat et altre bref ne pouns vser etc.

Pass. Nostre dit proue qe vostre feffor fut hors et celi qest hors ne peut sa accion doner iugement etc.

Den. Nous nel pouns iames demander com chapel par cel title estre ceo ceo ne serreit pas respouns vers nostre feffor.

Pass. Verite est mes ceo proue vostre feffor hors.

Hui. a Den. Vous nestez pas ci en tel cas com en auouere de comune apendaunt ou celi qe ad le soil a qei etc. put pleder lestat son feffor et plus halt et tut naueit le feffor ne son pere ne son ael et vltra bestes pur vser la comune vncore demort la comune.

Den. Mon feffor ne put demander si noun com apendaunt et mesme le title est done a moi.

Pass. Vostre feffor fut hors et accion ne etc.

Berr. a Den. Il semble qe vous auez mestre a dire plus.

Note from the Record.

De Banco Rolls, Easter, 5 Edw. II. (No. 192), r. 54, Yorkshire.

Rogerus Hay et Walterus de Bedewynde persona ecclesie de Aghtone in misericordia pro pluribus defaultis.

Idem Rogerus et Walterus summoniti fuerunt ad respondendum Ranulpho de Mauneby de placito quod permittant ipsum presentare idoneam personam ad ecclesiam de Thorgramby que vacat et ad suam spectat donacionem etc. Et vnde dicit quod quidam Hubertus de vallibus fuit seisisus de Manerio de Thorgramby cum pertinenciis ad quod aduocacio predictae ecclesie pertinet qui ad eandem ecclesiam presentauit tempore pacis tempore Henrici Regis aui domini Regis nunc quendam Thomam clericum suum qui ad presentacionem suam fuit admissus et institutus per cuius mortem predicta ecclesia modo vacat. Et de ipso Huberto descendit Ius presentandi cuidam Matillde vt filie et heredi. Et de ipsa Matillda cuidam Thome vt filio et heredi. Et de ipso Thoma cuidam Thome vt filio et heredi. ¹Et de ipso Thoma cuidam Thome vt filio et heredi² qui quidem Thomas de predicto Manerio cum per-

¹⁻² These words are probably repeated by mistake.

BEREFORD C.J. If he have presented to the whole, of which etc., and his clerk have taken the profits of the chapel, then he hath sufficiently presented to the chapel.

Denham. For aught you have said, our feoffor could recover by assize of *darrein presentment* if he had the same estate in the manor as his ancestor had; and we have the same estate, and no other writ than the *quare impedit* is open to us.¹

Passeley. What we have said proveth that your feoffor was out of possession [of the advowson], and one that is out of possession cannot grant any right of action. Judgment etc.

Denham. We can never claim it as a chapel on our present title; and, besides, what you say is no answer to our feoffor.

Passeley. That is true, but it goeth to the point that your feoffor was out of possession.

STANTON J. to *Denham.* You are not here in like case as in avowry of common appendant, where he that hath the soil to which etc. can plead the estate of his feoffor and a still higher one; and though the feoffor and his father and grandfather and his more remote ancestors had no cattle to use the common, yet the right to common doth still continue a right to common.

Denham. My feoffor could only claim as appendant, and that same title hath been given to me.

Passeley. Your feoffor was out of possession and could give no right of action.

BEREFORD C.J. to *Denham.* We think that you must say something more.

Note from the Record.

De Banco Rolls, Easter, 5 Edw. II. (No. 192), r. 54, Yorkshire.

Roger Hay and Walter of Bedwyn, parson of the church of Aughton, are in mercy for several defaults.

The same Roger and Walter were summoned to answer Ralph of Manby of a plea that they permit him to present a fit person to the church of Thorganby which is vacant and is regardant to his donation etc. And thereof he saith that a certain Hubert de Vaux was seised of the manor of Thorganby with the appurtenances, to which the advowson of the aforesaid church is appurtenant, and he presented to the same church in time of peace in the time of Harry the King, grandfather of the lord King that now is, a certain Thomas, his clerk; who upon his presentation was admitted and instituted, by whose death the aforesaid church is now vacant. And the right to present descended from the said Hubert to a certain Maud as his daughter and heir. And from this Maud to one Thomas as her son and heir. And from this Thomas to a certain Thomas as his son and heir. ²And from this Thomas to a certain Thomas as his son and heir,³ which Thomas enfeoffed the said Ralph of the

¹ See note on p. 194 above.

²⁻³ See the note on the opposite page.

Note from the Record—continued.

tinenciis feoffauit ipsum Ranulphum Tenendum sibi et heredibus suis imperpetuum. Et dicit quod ea ratione quod ipse modo seisitus est de predicto Manerio cum pertinenciis ad quod aduocacio predictae ecclesie pertinet et semper hucusque pertinuit ad ipsum Ranulphum spectat ad predictam ecclesiam presentare etc. predicti Rogerus et Walterus ipsum iniuste impediunt vnde dicit quod deterioratus est et dampnum habet ad valenciam ducentarum librarum. Et inde producit sectam etc.

Et Rogerus et Walterus per attornatum ipsius Rogeri veniunt Et Rogerus dicit quod non debet ei inde ad hoc breue respondere etc. Dicit enim quod cum idem Ranulphus nominet in breui suo ecclesiam de Thorgramby etc. non est ecclesia Immo Capella annexa ecclesie de Aghtone vnde ipse est patronus etc. Et petit iudicium de breui etc. Et Walterus pro se dicit quod ipse est persona impersonata in predicta ecclesia de Aghtone ad quam predicta Capella spectat etc. Et quod ipse nichil clamat in aduocacione eiusdem etc. Et Ranulphus dicit quod predictus Hubertus antecessor predicti Thome filii Thome feoffatoris sui cuius statum ipse habet presentauit ad predictam ecclesiam tanquam ad ecclesiam ratione predicti manerii de Thorgramby et non tanquam ad Capellam. Et hoc paratus est verificare etc. Et ex quo predictus Rogerus per nullum scriptum speciale vel alio modo docere potest quod ecclesia illa postmodum mutata fuit in Capellam etc. petit iudicium etc. maxime cum idem Ranulphus ratione Manerii predicti ad quod aduocacio predictae ecclesie pertinet habeat eundem statum quem predictus Hubertus qui vltimo presentauit habuit etc.

Et Rogerus dicit quod predictus Ranulphus est extraneus perquisitor predicti Manerii ad quod etc. de predicto Thoma filio Thome et dicit quod tempore quo manerium illud fuit in seisinā eiusdem Thome fuit ipsa Capella annexa predictae ecclesie de Aghtone et non ecclesia etc. Et ex quo idem Ranulphus alium statum clamare non potest in hac parte quam predictus Thomas feoffator suus etc. petit iudicium si ad aliquam verificacionem de antiquiori statu admitti debeat etc. Dies datus est eis de audiendo iudicio suo hic a die sancte Trinitatis in .xv. dies in eodem statu quo nunc etc.

Postea ad diem illum veniunt partes predictae et Rogerus Hay dicit quod tempore domini Regis Edwardi patris domini Regis nunc et eciam tempore Henrici Regis aui domini Regis nunc et eciam tempore domini Iohannis Regis proauī domini Regis nunc ante presentacionem quam predictus Ranulphus dicit factam fuisse per predictum Hubertum etc. tanquam ad ecclesiam etc. fuit tenta pro capella et non pro ecclesia et hoc pretendit verificare etc.

Et Ranulphus dicit quod predictus Hubertus presentauit predictum Thomam clericum suum ad predictam ecclesiam tanquam ecclesiam tempore predicti Henrici Regis aui Regis nunc sicut predictum est et hoc petit quod inquiratur per patriam etc. Et super hoc quidam Thomas de Pontefracto profert quasdam literas patentes Roberti de Pykering canonici Eboraci

Note from the Record—*continued.*

aforesaid manor with the appurtenances to hold to him and his heirs for ever. And he saith that because he is now seised of the aforesaid manor with the appurtenances, to which manor the advowson of the aforesaid church is appurtenant and ever hitherto hath been, it belongeth to him to present to the aforesaid church etc.; and the aforesaid Roger and Walter wrongfully impede him, whereby he saith that he hath suffered loss and hath damage to the amount of two hundred pounds. And thereof he produceth suit etc.

And Roger and Walter come by the attorney of the said Roger. And Roger saith that he ought not to answer Ralph thereof under this writ etc. For he saith that while the same Ralph names in his writ the church of Thorganby etc. it is not a church, but a chapel annexed to the church of Aughton, of which he himself is patron. And he asketh judgment of the writ etc. And Walter for himself saith that he is parson imparsonnee of the aforesaid church of Aughton to which the aforesaid chapel is regardant etc. And that he claimeth naught in the advowson of the same etc. And Ralph saith that the aforesaid Hubert, ancestor of the aforesaid Thomas, son of Thomas, his feoffor, whose estate he himself now hath, did present to the aforesaid church as to a church, in right of the aforesaid manor of Thorganby, and not as to a chapel. And this he is ready to aver etc. And, seeing that the aforesaid Roger cannot, by any special writing or in other manner, show that that church was afterwards changed into a chapel etc. he asketh judgment etc. on the ground that he, Ralph, in right of his possession of the manor of Thorganby to which the advowson of the aforesaid church is appurtenant, hath the same estate which the aforesaid Hubert that last presented had etc.

And Roger saith that the aforesaid Ralph is a strange purchaser of the aforesaid manor to which etc. from the aforesaid Thomas, son of Thomas; and he saith that at the time when that manor was in the seisin of the same Thomas this was a chapel annexed to the aforesaid church of Aughton, and not a church etc. And because the same Ralph cannot in this matter claim other estate than that which the aforesaid Thomas, his feoffor etc., he asketh judgment whether he ought to be admitted to any averment as to an older estate etc. A day is given to them to hear their judgment here in the quindenies of the Holy Trinity in the same condition in which now etc.

Afterwards upon that day the aforesaid parties come, and Roger Hay saith that in the time of the lord King Edward, father of the lord King that now is, and eke in the time of King Harry, grandfather of the lord King that now is, and eke in the time of the lord King John, great-grandfather of the lord King that now is, before the presentation which the aforesaid Ralph saith was made by the aforesaid Hubert etc. as to a church, this was held to be a chapel and not a church; and this he is ready to aver etc.

And Ralph saith that the aforesaid Hubert did present the aforesaid Thomas, his clerk, to the aforesaid church, as to a church, in the time of the aforesaid Harry the King, grandfather of the King that now is, as is aforesaid, and he asketh that this be inquired of by the country etc. And upon this a certain Thomas of Pontefract doth make *profert* of certain letters patent of Robert of Pickering, canon of York, Vicar General of the Venerable Father

Note from the Record—continued.

venerabilis patris domini Willelmi dei gracia Eboracensis Archiepiscopi Anglie primatis in remotis Agentis vicarii generalis in hec verba Vniuersis sancte matris ecclesie filiis ad quos etc. Robertus de Pykering etc. salutem in omnium saluatore Excommunicatorum nomina expedit fore nota vt dum a communione fidelium solempnius excluduntur rubore saltem profusi ad gremium ecclesie cuius contempserunt censuram salubrem inclinentur Cum itaque Ranulphus de Maimeby dicti venerabilis patris parochianus ob ipsius manifestam offensam sit maioris excommunicacionis sententia canonice innodatus et talis publice denunciatus ipsum sic excommunicatum vobis tenore presentium nominauimus Rogantes quatenus ob reuerenciam dei et ecclesie ipsum Ranulphum in congregacionibus tractatibus colloquiis et omnibus actibus legitimis tam in iudicio quam extra iudicium arcus euitetur donec post satisfaccionem condignam absolucionis beneficium promeruerit obtinere In cuius rei testimonium etc. sigillum officii nostri presentibus est appensum Datum apud Eboracum Kalendis Iulii Anno gracie millesimo tercentesimo duodecimo. Ideo loquela inde remanet sine die quousque etc.

Postea in octabis sancti Michaelis anno regni domini Regis nunc sexto venit predictus Ranulphus et ostendit literas venerabilis patris Domini Willelmi permissione diuina Eboracensis Archiepiscopi Anglie primatis set eciam litteras decani et capituli eiusdem quod idem Ranulphus ab omni vinculo excommunicacionis et omnimodi sentenciis in forma Iuris absolutus est Ideo fiat ei breue de resummonicionis etc. Postea predicta loquela resummonita fuit hic in octabis sancti Martini proximo sequentibus etc. Ad quem diem predicti Rogerus et Walterus fecerunt se essonari versus predictum Ranulphum de predicto placito Et habuerunt inde diem hic ad hunc diem scilicet in octabis sancti Hillarii anno regni domini Regis nunc sexto. Et modo venit predictus Ranulphus et optulit se quarto die versus eos de predicto placito. Et ipsi non veniunt. Iudicio attachiati quod sint hic a die Pasche in .xv. dies etc. Postea in octabis sancte Trinitatis anno regni domini Regis nunc sexto venit predictus Ranulphus et similiter predictus Rogerus per attornatos suos Et idem Rogerus in misericordia pro pluribus defaltis etc. Et Ranulphus dicit vt prius quod predictus Hubertus tempore predicti Henrici Regis presentauit predictum clericum suum ad ecclesiam de Thorgranby quam predictus Rogerus dicit esse capellam tanquam ad ecclesiam etc. per cuius mortem predicta ecclesia modo vacat etc. prout paratus est verificare etc. Et ex quo predictus Rogerus ad hoc non respondet etc. petit iudicium etc.

Et Rogerus dicit quod ipsa est capella annexa predicte ecclesie de Aghtone vt predictum est et fuit a tempore quo non extat memoria et hoc pretendit verificare etc. Et Ranulphus dicit quod ipsa est ecclesia per se et fuit a tempore memorie predicte et non capella annexa sicut predictus Rogerus dicit Et hoc petit quod inquiratur per patriam Et Rogerus similiter Ideo

Note from the Record—*continued.*

the lord William, by the grace of God Archbishop of York, Primate of England, now absent in foreign parts, in these words. "To all the children of Holy Mother Church to whom etc. Robert of Pickering etc. greeting in the Saviour of all. It is expedient that the names of excommunicate persons be published that while they are the more formally excluded from the community of the faithful they may, at least through shame, incline themselves to the bosom of the Church whose wholesome censure they have disregarded. Since, then, Ralph of Manby, who is of the diocese of the said venerable Father, is, by reason of his manifest offence, canonically bound by the sentence of the greater excommunication and hath been publicly denounced as so bound, we have therefore named him to you by the tenor of these presents as being so excommunicate, asking of your reverence for God and the Church that the same Ralph be strictly avoided in congregations, discussions, conversations and in all lawful actions, as well in court as out of court, until that, after making sufficient satisfaction, he shall have deserved to obtain the benefit of absolution. In witness of which etc. the seal of our office is appended to these presents. Given at York on the Kalends of July in the year of Grace one thousand three hundred and twelve." So the hearing is to remain over without day until etc.

Afterwards in the octaves of St. Michael in the sixth year of the reign of the lord King that now is the aforesaid Ralph cometh and showeth letters of the venerable Father the Lord William, by divine permission Archbishop of York, Primate of England, and also letters of the Dean and Chapter of the same [witnessing] that the same Ralph was wholly absolved from the bond of excommunication and from sentences of every kind in legal form. So a writ of re-summons is to issue to him etc. Afterwards the aforesaid plea was re-summoned here in the octaves of St. Martin next following etc. Upon which day the aforesaid Roger and Walter had themselves essoined against the aforesaid Ralph of the aforesaid plea. And they had a day thereby upon this day, to wit in the octaves of St. Hilary in the sixth year of the lord King that now is. And the aforesaid Ralph now cometh and offereth himself against them on the fourth day in respect of the aforesaid plea. And they do not come. Judgment that they be attached to be here a fortnight after Easter Day etc. Afterwards in the octaves of the Holy Trinity in the sixth year of the lord King that now is the aforesaid Ralph cometh and likewise the aforesaid Roger, by their attorneys. And the same Roger is in mercy for several defaults etc. And Ralph saith as before that the aforesaid Hubert did in the time of the aforesaid Harry the King present his aforesaid clerk to the church of Thorganby, which the aforesaid Roger saith is a chapel, as to a church etc., by whose death the aforesaid church is now vacant etc., as he is ready to aver etc. And because the aforesaid Roger doth not answer this etc., he asketh judgment etc.

And Roger saith that this is a chapel annexed to the aforesaid church of Aughton, as is aforesaid, and hath been such from a time higher than memory ; and this he doth offer to aver etc. And Ralph saith that this is an independent church and was so within the aforesaid time of memory and is not a chapel annexed as the aforesaid Roger doth say. And he doth ask that this be inquired of by the country. And Roger doth the like. So the Sheriff is

Note from the Record—*continued*.

preceptum est vicecomiti quod venire faciat hic in octabis Sancti Michaelis .xij. etc. per quos etc. Et qui nec etc. Quia tam etc. Idem dies datus est predicto Waltero etc.

Postea a die Pasche in tres septimanas anno regni domini Regis nunc septimo veniunt partes predictæ in propriis personis suis Et similiter Iuratores de consensu electi Qui dicunt super sacramentum suum quod predictus Hubertus nunquam presentavit predictum Thomam clericum suum ad ecclesiam de Thorgramby dicunt enim quod predicta ecclesia de Thorgramby non est ecclesia Immo capella annexa ad ecclesiam de Aghtone et fuit annexa eidem a tempore quo non extat memoria Ideo consideratum est quod predicti Rogerus et Walterus eant inde sine die Et predictus Ranulphus nichil capiat per Iuratam istam set sit in misericordia pro falso clamore etc.

8. CROFT *v.* OSSINGTON.¹I.²

Vn scire facias ou home qauoit accioun a demander tenementz par bref de Intrusion entra et fut ouste par jugement et chace a sa accioun vt patet infra.

Vn Richard fu seisi de certeinz tenementz le quel hors de sa seisine lessa a vn Thomas son piere a terme de sa vie le quel mesme ceux tenementz dona a vne Isabele et cele Isabele les dona arere a mesme celi Thomas et a vne Sibille et a les heirs de corps Thomas issanz sur qi vne fyne³ se leua par bref de bref [*sic*] de garrantie de chartre en le quel bref Sibille nest pas nome T. engendra vn fuitz E.⁴ de mesme ceste Sibille Thomas et Sibille deuierunt vne Agneis fille Richard qe primes lessa ceux tenementz a son piere a terme de sa vie si entra en ceux come en sa reuersion Et le fitz Thomas et Sibille porta vne Scire facias deuant le Roi deuers mesme cele Agneis la fille Richard et Agneis allega qe Thomas son ael nauoit vnqes rens si noun a terme de vie et la reuersion fut a lui come a fille et heir Richard qe lessa par qi la fyne qe se leua dautri droit fut nule par tant ne dut estre execut Et dautre part ele fut denz age et couerte de baroun en temps qant la fyne sen leua et auxi allega qe si ele fust hors ele auereit accioun dont a moult plus fort ele defendra sa tenance par voie de excepcioun Item Thomas

¹ Reported by *G*, *D* and *R*. Names of the parties from the Record. ² Text of (I) from *D*. ³ This fine, the effect of which is fully set out in the following Note from the Record, is still in existence. ⁴ *Sic*, but apparently a slip for T.

Note from the Record—*continued*.

commanded that he make to come here in the octaves of St. Michael twelve etc. through whom etc., and who are neither etc., because both etc. The same day is given to the aforesaid Walter etc.

Afterwards, three weeks after Easter Day in the seventh year of the reign of the King that now is, the parties aforesaid come in person, as do also the jurors, chosen by consent of the parties, and these upon their oath do say that the aforesaid Hubert did never present the aforesaid Thomas, his clerk, to the church of Thorganby, for they say that the aforesaid church of Thorganby is not a church, but a chapel annexed to the church of Aughton, and hath been annexed to the same from a time higher than memory. So it is considered that the aforesaid Roger and Walter go hence without day. And the aforesaid Ralph is to take naught by that Jury, but is to be in mercy for his false claim etc.

8. CROFT *v.* OSSINGTON.¹

I.

Scire facias, where one that had a right to claim tenements by a writ of Intrusion entered, and was ejected by judgment and driven to his action, as appeareth below.

One Richard was seised of certain tenements which out of his seisin he leased to one Thomas, his father, for the term of his life. This same Thomas gave these same tenements to one Isabel, and this Isabel gave them back to this same Thomas and to one Sibyl and to the heirs of the body of Thomas issuing. In respect of these tenements a fine was levied under a writ of warranty of charter in which Sibyl was not named. Thomas begat of this same Sibyl a son, T.² Thomas and Sibyl died. One Agnes, daughter of the Richard that first leased these tenements to his father for the term of his life, entered upon them as upon her reversion. And the son of Thomas and Sibyl brought a *scire facias* before the King against this same Agnes the daughter of Richard, and Agnes alleged that Thomas, her grandfather, had naught except for the term of his life, and that the reversion belonged to herself as the daughter and heir of Richard the lessor; and that consequently the fine which was levied in respect of what was the right of other persons [not named therein] was null, and so ought not to have effect. And, further, she was within age and *coverte* with a husband at the time the fine was levied; and she also alleged that if she had not been in possession she would have had a right of action, and that therefore she is now in a much stronger position to defend her tenancy by way

¹ See the *Introduction*, p. xxxii.² See the text.

continua son estat par le primer lees et de cel estat morust seisi et tout tesmoigne la fyne vn nouel estat par tant qe Sibille dust estre partie a la fyne ne se dust greuer qar ele ne fust pas nome en le bref original sur qi la fyne se leua.

Et Thomas qe suwist le seire facias dit qe depuis qe son piere auoit estat par la forme et par le fait Dionise¹ cel estat ne poet estre defait par vn entre de lui qe cleyme vn droit plus haut esteynt par la succession en la persone le heir en la taille sanz veye de lei par la quele lei le droit poet estre trie par jugement mes ceo serreit par voie daccioun a la sute celui ou son heir qe dust auer lesse a terme de vie del tenant et ceo proue il par cele raison qe sil vst la seisine de tenementz et Agneis empledast la purreit il auer son garrantie en respouns en moult des maneres le quel il ne put vser hors de sa seisine Estre ceo de deux meschiefs la meyndre est a eslire et le greindre meschief serreit a ouster nous de nostre execucioun qe par tant perdroms nostre voucher et auoir a la value et les excepciouns et les respouns qe nous purroms auoir en nostre seisine en fors barrer ceste Agneis de sa demande quele chose ne pouns vser hors de seisine qe a chacer Agneis a sa accioun si droit en vst de lees son piere.

Et agarde fust par *Brabazon Roubury* et *Spigurnel* qe Thomas vst execucioun.

Et hoc fuit mirum quod accio Thome debuit exequi per viam istam sine breui originali quia finis fuit leuata super breue de Warrancia carte quod supponit antecessorem suum fuisse seisitum per feoffamentum extra curiam pro eo quod antecessor suus fuit de tali statu etc.

II.²

Seire facias.

Dionise de C. porta vne seire facias vers I. le fitz Richard de B. a sauer moustre si sauoit rien dire par quei execucioun de vne fin qe se leua entre thomas de L. et ceste dionise certain iour et an etc. ne se deuoit estre execute le quel Richard³ [*sic*] vint en court par garnissement et demanda oy de la fin etc. qe voleit qe thomas conust etc. estre le dreit Dionise cum ceo ke dionise auoit de soun doun etc. et obliga

¹ *Sic*, but apparently a slip for *Isabele*.

² Text of (II) from *R* collated with *G*.

³ *G* omits.

of exception. Again, Thomas continued his estate under the original lease and died seised of that estate; and because the fine witnesseth a new estate, therefore Sibyl ought to have been a party to it; and it ought not to be in prejudice of her own estate, for she was not named in the original writ upon which the fine was levied.

And Thomas that sued out the *scire facias* saith that, since his father had an estate by the form [of the gift] and by the deed of Isabel,¹ this estate ought not to be defeated by the entry of one that claimeth a higher right, [a right that was] extinguished by succession in the person of the heir in the tail, except by determination by law, which can be had by judgment; and that determination must be had by way of action at the suit of him, or his heir, that could have leased for the term of the tenant's life; and he urgeth this upon the ground that if he had seisin of the tenements and Agnes impleaded him, he would be able, in answer, to vouch to warranty in many ways which are not open to him while he is not in seisin. Moreover, of two hardships the less should be chosen, and the greater hardship would be to oust us from our execution, for thereby we shall lose our voucher and our right to have to the value [of the tenements lost from the warrantor], and also the exceptions and the answers of which we might avail ourselves if we were in seisin to bar this Agnes from her claim, which we cannot use while we are out of seisin to drive Agnes to her action to determine whether she hath any right under the lease of her father.

And it was ruled by BRABAZON C.J. (K.B.), ROUBERY J. and SPIGURNEL J. that Thomas should have execution.

And it was remarkable that Thomas established his right after this fashion without [proceeding under] an original writ, for the fine was levied under a writ of warranty of charter which supposeth that his ancestor was seised by feoffment out of Court, because his ancestor had such an estate etc.

II.

Scire facias.

Denis of C. brought a *scire facias* against J. the son of Richard of B., to wit, to show whether he could say aught why execution of a fine that was levied between Thomas of L. and this Denis on a certain day and year etc. should not be executed. And the said [J. the son of] Richard came into Court by notice and asked *oyer* of the fine etc. And the fine witnessed that Thomas acknowledged etc. to be the right of Denis, as being what Denis had by his gift etc., and he bound

¹ See the text.

etc. et pur ceste conissaunce garrantie fin etc. Dionise regranta meimes les tenementz a Thomas a auer et a tenir a li et a ces heirs de soun cors engendrez et sil deuiast etc. mesme les tenementz reuertissent a dionise etc.

Toud. Vous auet oy la fin par la quele la reuersion est taille.

Malm. Vous ne devez execucion auer kar le dist Thomas auoit ceux tenementz a terme de sa vie du lees Richard nostre piere et apres la mort Thomas nous entrames cum heir Richard a qi la reuersioun apres la mort Thomas appendist et entrames cum en nostre dreit et demandoms iugement si de ceux tenementz deiue execucion estre fet ali.

Toud. Ceo respouns chiet en voidaunce de la fin kar la fin proue le contrarie de vostre dist qe le veut qe Thomas granta etc. et obliga etc.

Friske. Nous ne pledoms pas a la fin kar a ceo nous ne pomus estre partie qe nous sumes a ceo tut estrange einz pledoms al estat qe Thomas auoit du lees nostre auncestre et apres la mort etc. nous sumes einz cum en nostre dreit et demandoms iugement. Estre ceo au temps de cele fin leue sumes dedeinz age par quei nous nauoms mestre a ceo respoundre.

Toud. La fin se leua entre Thomas et nous la quele limite¹ son estat ali et a ses heirs de son cors etc. apres la mort le dreit de la reuersioun si est a nous par uirtu de la ditte fin lequel dreit ne puet estre douestu [*sic*] de² nostre persone sil ne seit par nostre fet demeine et lei nous doune de auer execucioun de la fin apres sa mort pur ceo qil deuia sanz etc. et prioms execucion etc.

Hle. Vous ne devez execucion auer kar thomas par ki doun vous dites auer ceux tenementz rien nauoit en ceux tenementz si noun du lees nostre auncestre³issi qil deuia sanz etc. apres la⁴ mort nous sumes einz cum en nostre dreit iugement.

Malm. De meilloure condicion ne deuert estre dauer execucion de ceste fin qe vous naueriet si vous fuissez tenant et nous sumes par voie de accion a demander vostre dreit mes si seit qe vous ne me poez barrer par la fin nent plus naueret execucion et demandoms iugement.

Toud. Nous serroms de meillour condicioun si vous fuissez par voie de accion⁵ etc. nous purroms vouchier par uertue de la fin qe veut garantir leir Thomas et recouerer a la value par quei meindre meschief est en lei qe vous sieiez par voie de accion ou nous pomus auer nostre auoier et vous par tiele voie poet⁶ recouerir vostre dreit si dreit en eiez qe nous destre oste de ceste execucion.

¹ From *G*; *R* has limitacion. ² From *G*; *R* has en. ³⁻⁴ For this *G* has et quele fyn qe se leua entre vous et ly pus cel lees desicom il deuia seisi il fut en son premer estat apres qi. ⁵ *G* adds qe ore. ⁶ Supplied from *G*.

etc., and, in consideration of this acknowledgment, warranty, fine etc., Denis regranted these same tenements to Thomas to have and to hold to him and to his heirs of his body engendered ; and if he died etc. the same tenements were to revert to Denis etc.

Toudeby. You have heard the fine by which the reversion is tailed.

Malberthorpe. You ought not to have execution, for the said Thomas had these tenements for the term of his life by the lease of Richard our father, and after the death of Thomas we entered, as heir of Richard to whom the reversion, after the death of Thomas, belonged ; and we entered as into our right, and we ask judgment whether execution in respect of these tenements ought to be granted him.

Toudeby. That answer goeth to the avoidance of the fine, for the fine proveth the contrary of what you say, for it witnesseth that Thomas granted etc. and bound etc.

Friskeney. We are not pleading to the fine, for to that we cannot be party, seeing that we are altogether stranger to it, but we are pleading to the estate which Thomas had by the lease of our ancestor, after whose death we are in seisin as of our right, and we ask judgment. Further than this, at the time of that fine we were within age, and consequently we have no need to put in any answer to it.

Toudeby. The fine was levied between Thomas and ourselves, and it limiteth his estate to himself and the heirs of his body etc. After his death we have the right to the reversion by virtue of the said fine, of the which right we cannot be deprived except by our own deed ; and the law entitleth us to have execution of the fine after Thomas's death, because he died without etc., and we pray execution etc.

Herle. You ought not to have execution, for Thomas, by whose gift you say you have these tenements, had naught in these tenements save by the lease of our ancestor, and he died without etc., and after his death we are in possession as of our right. Judgment.

Malberthorpe. You cannot be in a stronger position to claim execution of this fine than you would be in if you were tenant and we were claiming your right by way of action ; but if it be that you could not bar me by the fine, no more will you get execution, and we ask judgment.

Toudeby. We should be in a better condition if you were taking action etc. We should be able to vouch in virtue of the fine which giveth warranty to the heir of Thomas, and we should have recovery to the value. Therefore there would be less hardship of law if you brought your action against us, when we could have our voucher, and you could by such action recover your right, if right you have, than that we should be ousted from this execution.

Malm. De deux duresses home deit eslire le meindre mes meindre est etc. qe nous eioms nostre dreit le quel nous sumes en continuaunce et ceo par verrai tittle qe a vous destre oste de ceste execucion la ou vous nauet nul dreit etc.

Friske. ¹Si nous portames nostre bref de Intrusion vers vous la fin ne serreit pas barre a nous.

Rouberi. Il achacereit [*sic*] vostre bref de Intrusion par la fin.

Frisk. Dount seroms saunz recouerer ke serreit en countre lei etc.

Pass. Vous auerez vostre recouerer par bref dentre ad terminum qui preteriit en le post par quei etc.

Malm. ²Deloure deloure³ [*sic*] qe nous sumes en nostre dreit iugement.

Brabason. Vous ne poez dedire qe la fin ne se leua par la quele Thomas granta le dreit a dionise etc. et obliga etc. et la reuercion regardant ali par mesmes la fin et si vous seiez par voie de accion ele auera soun vocher a garrauntie et lei ne la ostera pas de cele auantage si agarde la court qe le eit execucion et vous a dieu etc.

Note from the Record.

Coram Rege Rolls, Easter, 5 Edw. II. (No. 208), r. 79d., Sussex.

Dominus Rex mandauit breue suum in hec verba—Edwardus dei gracia Rex Anglie Dominus Hibernie et Dux Aquitanie Thesaurio et Camerariis suis salutem. Quia quibusdam certis de causis certiorari volumus super tenorem pedis cuiusdam finis nuper leuati in Curia Celebris memorie domini Edwardi quondam Regis Anglie patris nostri coram Thoma Weylonde et sociis suis tunc Iusticiariis eiusdem patris nostri de Banco per breue suum anno regni sui Nono inter Dionisium de Crofte querentem et Thomam de Ossyngtone deforciantem de vno messuagio vna carucata terre et tribus acris prati cum pertinenciis in Brawatere et Terringes in Comitatu Sussexie vobis mandamus quod scrutatis pedibus finium predictorum coram prefatis Iusticiariis in eodem Banco predicto leuatorum qui sunt in Thesauria nostra sub custodia vestra vt dicitur transcriptum pedis finis illius nobis sub sigillo scaccarii nostri sine dilacione mittatis et hoc breue. Teste me ipso apud Westmonasterium .vj. die Maii anno regni nostri secundo. Virtute cuius breuis predicti Thesaurius et Camerarii mandauerunt transcriptum pedis finis in hec verba. Hec est finalis concordia facta in Curia domini Regis apud Westmonasterium in Octabis sancti Martini anno regni Regis Edwardi filii Regis Henrici nono coram Thoma Welond Iohanne de Louetot Rogero

¹ *G inserts* Estre ceo.

²⁻³ *desicom, G.*

Malberthorpe. Of two hardships the less should be chosen; and it is a less etc. that we should have our right, which we are holding in continuance and by true title, than that you should be barred from this execution, in circumstances where no right of yours is involved etc.

Friskeney. If we brought our writ of Intrusion against you the fine would not bar us.

ROUBERY J. He would abate your writ of Intrusion by the fine.

Friskeney. Then we should be without recovery, and that would be against the intention of the law.

Passeley. You will have your recovery by writ of entry *ad terminum qui preterit* in the *post*; wherefore etc.

Malberthorpe. Since it is our right that we are in possession of, judgment.

BRABAZON C.J. (K.B.) You cannot deny that a fine was levied by which Thomas granted the right to Denis etc. and bound himself etc., and by the same fine the reversion is regardant to him; and if you proceed against him by way of action he will have his voucher to warranty, and the law will not deprive him of this advantage; and therefore the Court giveth judgment that he have execution and you adieu etc.

Note from the Record.

Coram Rege Rolls, Easter, 5 Edw. II. (No. 208), r. 79d., Sussex.

The lord King sent his writ in the words following:—‘Edward by the grace of God King of England, Lord of Ireland and Duke of Aquitaine, to his Treasurer and Chamberlains greeting. Seeing that for certain reasons we would be certified as to the tenor of the foot of a certain fine lately levied in the Court of the lord Edward of illustrious memory, aforesaid King of England, our Father, before Thomas Weyland and his companions, then being Justices of the Bench of our same Father, by writ of his in the ninth year of his reign between Denis of Croft, complainant, and Thomas of Ossington, deforciant, of a messuage of one carucate of land and three acres of meadow, with the appurtenances, in Brawater¹ and Tarring in the county of Sussex, we command you to cause the feet of the aforesaid fines levied before the aforesaid Justices in the same Bench aforesaid, which are, it is said, in our Treasury under your custody, to be searched, and to send to us a transcript of the foot of that fine under the seal of our Exchequer without delay, and this writ. Witness Myself at Westminster this sixth day of May in the second year of our reign.’ In virtue of this writ the Treasurer and Chamberlains aforesaid sent a transcript of the foot of the fine in these words:—‘This is the final agreement made in the Court of the lord King at Westminster in the octaves of St. Martin in the ninth year of the reign of King Edward the son of King Harry before Thomas Weyland, John

¹ *Qu.* Broadwater.

Note from the Record—continued.

de Leycestere et Willelmo de Burntone Iusticiariis et aliis domini Regis fidelibus tunc ibi presentibus Inter Dionisium de Crofte querentem et Thomam de Ossyntone deforcientem de vno messuagio vna carucata terre et tribus acris prati cum pertinenciis in Brawatre et Terringes vnde placitum conuencionis summonita fuit inter eos in eadem Curia scilicet quod predictus Thomas recognoscit predicta tenementa cum pertinenciis esse ius ipsius Dionisii vt illa que idem Dionisius habet de dono predicti Thome. Et pro hac recognicione fine et concordia Idem Dionisius concessit predicto Thome et Iuliane vxori eius predicta tenementa cum pertinenciis Habenda et tenenda eisdem Thome et Iuliane et heredibus quos idem Thomas de ipsa Iuliana procreauerit de predicto Dionisio et heredibus suis imperpetuum Reddendo inde per annum duos denarios ad festum Sancti Michaelis pro omni seruicio consuetudine et exaccione ad predictum Dionisium et heredes suos pertinente Et faciendo inde capitalibus dominis feodorum illorum pro predicto Dionisio et heredibus suis omnia alia seruicia que ad illa tenementa pertinent. Et predictus Dionisius et heredes sui Warrantizabunt eisdem Thome et Iuliane et heredibus ipsius Thome predictis predicta tenementa cum pertinenciis per predicta seruicia contra omnes homines imperpetuum. Et si forte contingat quod predictus Thomas obierit sine herede de corpore ipsius Iuliane procreato tunc predicta tenementa post decessum ipsius Iuliane integre reuenterentur ad predictum Dionisium et heredes suos quiete de aliis heredibus ipsius Thome Tenenda de Capitalibus dominis feodorum illorum per seruicia que ad illa tenementa pertinent imperpetuum. Pretextu cuius finis ad sectam Thome filii et heredis predicti Thome de predicta Iuliana procreati preceptum fuit vicecomiti Sussexie quod scire faceret Agneti que fuit vxor Gilberti de Batecumbe tenenti vnum Messuagium medietatem vnus carucate terre et tres acras prati cum pertinenciis de tenementis predictis per duos etc. quod esset coram Rege in crastino Assencionis domini vbicunque etc. ad ostendendum etc. si quid etc. quare predictus Thomas filius et heres predicti Thome de corpore ipsius Iuliane procreati [*sic*] predictum Messuagium medietatem vnus carucate terre et tres acras prati cum pertinenciis iuxta formam finis predicti habere et tenere non debet et vltius etc. quod Curia etc. Ad quem diem predictus Thomas venit et similiter predicta Agnes per premuncionem sibi factam venit et predictus Thomas petit execucionem etc. Et predicta Agnes dicit quod predictus Thomas executionem predicti finis habere non debet dicit enim quod predicta tenementa aliquo tempore fuerunt in seisina cuiusdam Ricardi de Ossyntone patris prefate Agnetis qui quidem Ricardus tradidit et concessit cuidam Thome patri predicti Thome qui nunc petit tenementa predicta Tenenda ad ter

Note from the Record—*continued.*

of Lovetot, Roger of Leicester and William of Burnton, Justices, and other faithful subjects of the lord King then present there, Between Denis, of Croft, complainant, and Thomas of Ossington, deforciant, of one messuage, one carucate of land and three acres of meadow, with the appurtenances, in Brawater and Tarring, in respect of which a plea of covenant was summoned between them in the same Court, to wit, that the aforesaid Thomas doth acknowledge the aforesaid tenements with the appurtenances to be the right of the same Denis, as those which the aforesaid Denis hath of the gift of the aforesaid Thomas. And in consideration of this acknowledgment, fine and agreement the same Denis granted to the aforesaid Thomas and Gillian his wife the aforesaid tenements with the appurtenances to have and to hold to the same Thomas and Gillian, and the heirs which the same Thomas shall beget of the same Gillian, of the aforesaid Denis and his heirs for ever, rendering therefor two pence every year on the Feast of St. Michael for all services, customs and exactions thereto appertaining to the aforesaid Denis and his heirs, and performing therefor to the chief lords of those fees, on behalf of the aforesaid Denis and his heirs, all other services pertaining to those tenements. And the aforesaid Denis and his heirs will warrant to the same Thomas and Gillian and to the aforesaid heirs of the same Thomas the aforesaid tenements with the appurtenances for the aforesaid services against all men for ever. And if it should chance to happen that the aforesaid Thomas shall die without heir begotten of the body of the same Gillian then the aforesaid tenements shall wholly revert to the aforesaid Denis and his heirs after the death of the same Gillian without disturbance by the other heirs of the same Thomas to hold of the chief lords of those fees for ever by the services appurtenant to those tenements.' In virtue of this fine the Sheriff of Sussex was commanded, on the suit of Thomas, son and heir of the aforesaid Thomas begotten of the aforesaid Gillian, that he should make Agnes that was wife of Gilert of Bateccombe¹ tenant of one messuage of a moiety of one carucate of land, and of three acres of meadow, with the appurtenances of the aforesaid tenements, know by two etc. that she should be before the King on the morrow of the Ascension of Our Lord wheresoever etc. to show etc. if anything etc. why the aforesaid Thomas, son and heir of the aforesaid Thomas begotten of the body of the aforesaid Gillian, ought not to have and to hold the aforesaid messuage, moiety of one carucate of land, and three acres of meadow, with the appurtenances, according to the form of the aforesaid fine, and further etc. because the Court etc. Upon which day the aforesaid Thomas cometh, and likewise the aforesaid Agnes by the notice given to her; and the aforesaid Thomas asketh execution etc. And the aforesaid Agnes doth say that the aforesaid Thomas ought not to have execution of the aforesaid fine, for she saith that the aforesaid tenements were at one time in the seisin of a certain Richard of Ossington, father of the aforesaid Agnes, which Richard delivered and granted to a certain Thomas, father of the aforesaid Thomas, who now claimeth, the aforesaid tenements to hold

¹ *Qu.* Balcombe.

Note from the Record—continued.

minum vite sue tantum qui quidem Thomas dedit predicta tenementa prefato Dionisio et inde finis inter eos leuauit prefata Agnes tunc temporis infra etatem existens et viro cooperta finem predictum sic in exheredacionem suam leuatum calumpniauit et dicit quod predictus Thomas superuixit prefatum Ricardum per quod ipsa Agnes post decessum ipsius Thome predicta tenementa intrauit vt ius et hereditatem suam et petit iudicium etc.

Et super hoc datus est dies partibus in octabis Sancte Trinitatis vbicunque etc. Ad quem diem predictus Thomas venit et similiter predicta Agnes venit et idem Thomas petit execucionem etc. vt prius etc. Et quia videtur Curie quod racione predicta quam prefata Agnes allegauit execucio finis predicti retardari non debet et maxime cum predictus finis inter prefatos Dionisium et Thomam rite leuatus adhuc in robore suo existat preceptum est vicecomiti quod prefato Thome filio et heredi predicti Thome de Ossyntone plenariam seisinam de Messuagio medietate Carucate terre et tribus acris prati predictis cum pertinenciis de predictis tenementis in predicto fine contentis sine dilacione habere faciat iuxta tenorem eiusdem finis etc.

9. PLUMBEREWE AND FOGHTLESTONE *v.* MONTFORT.¹I.²

Entre sur la nouele disseisine priere estre receu fut grante.

Thomas de ploutch porta vn bref dentre sur la nouele disseisine vers William de Mounteforde qe fist defaute apres defaute auoit Ioure a treis simeines de pasche a quel iour sur vient vne peronelle de nerford et dist qe lauandist William naueit rien en les tenemenz si noun a terme de vie du lees R. de Nerford soun auncestre et pria estre receu a defendre soun dreit et demanda iugement de la noun soute Thomas qe ne seut pas.

Hle. Vous nestes partie a cesti bref par quei vous ne poez la noun seute chalenger la cour le fra demander de office a nostre requeste et sil ne vigne pas la noun seute serra agarde.

Hle. [*sic*] La court ne fra iames demander la partie saunz ceo ke la partie chalenge sil ne seit au drein iour de terme.

Toud. Peronelle vous durra .xx.s. atiels qe vous pledet ore ouesqe li.

¹ Reported by *D* and *R*. Names of the parties from the Record. ² Text of (I) from *R*.

Note from the Record—continued.

for the term of his life only ; the which Thomas gave the aforesaid tenements to the aforesaid Denis ; and a fine thereof was levied between them. The aforesaid Agnes, who at that time was within age and *coverte* with a husband, hath challenged the aforesaid fine levied in her own disherison and saith that the aforesaid Thomas did survive the aforesaid Richard, and therefore the said Agnes, upon the death of the said Thomas, did enter the aforesaid tenements as her right and inheritance, and she asketh judgment etc.

And thereupon a day is given to the parties in the octaves of the Holy Trinity wheresoever etc. Upon which day the aforesaid Thomas cometh, and likewise the aforesaid Agnes cometh etc. ; and the same Thomas doth ask execution etc., as before etc. And because it doth seem to the Court that for the reason aforesaid which the aforesaid Agnes has alleged execution of the aforesaid fine ought not to be delayed, and especially since the aforesaid fine duly levied between the aforesaid Denis and Thomas is still in full force, the Sheriff is commanded that he is to make the aforesaid Thomas, son and heir of the aforesaid Thomas of Ossington, to have full seisin of the messuage of the moiety of a carucate of land and of the three acres of meadow aforesaid, together with the appurtenances of the aforesaid tenements, comprised in the aforesaid fine, without delay, according to the tenor of the same fine etc.

9. PLUMBEREWE¹ AND FOGHTLESTONE² v. MONTFORT.

I.

Entry based on novel disseisin, where prayer to be received to defend the right was granted.

Thomas of Plumberewe brought a writ of entry based on novel disseisin against William of Montfort, who made default after default and had a day three weeks after Easter ; upon which day came one Peronel of Narford and said that the aforesaid William had naught in the tenements save for the term of his life by the lease of Robert of Narford, her ancestor, and she prayed to be received to defend her right, and she asked judgment of the non-suit of Thomas, who doth not prosecute his suit.

Herle. You are not party to this writ, and so you cannot claim the non-suit. The Court will have Thomas formally called at our request, and if he do not come the non-suit will be awarded.

Herle. If the defendant be not in Court on the last day of the term the Court will never call him except on application by the plaintiff.

Toudeby. Peronel will give you twenty shillings if you will consent to let her plead with you.

¹ *Qu.* Plumstead.² *Qu.* Fodderstone.

Et la cause fust pur quei pur ceo ke le demandant ne voleit pas se profrer tant qe al fin du terme et puis la partie prist les .xx.s. et demanda iugement de la defaute pus Peronell pria etc. et fust [receu].

Scrop. Moustret vostre dreit.

Malm. Peronelle vous dist qe William qe fet defaute tient les tenemenz a terme etc. du les R. de Nerford etc. apres la mort Robert descendi le dreit a ceste peronelle et a maud cum a deus files et vn heir etc. sanz qi peronelle ne put ceo dreit moustrer et prie eide de li.

Scrop. Vous soul priastes estre receu etc. Ore dites vous qe vous ne poez soul le dreit defendre saunz autre ¹et issi estes receu etc. sulum ceo ke vous priastes² par quoi demandoms iugement.

Toud. Nous auoms moustre qe le dreit nest pas issi entre en nostre persone si qe nous pouns a vous tiel dreit defendre sanz etc.

Scrop. A la commune lei home ne serra pas receu mes ore est la receite done par statut qe veut quod si illi ad quos etc. et ius suum defendere etc. qe il seit receu et autrement ne mie et deloure qil [*sic*] nest pas prest cum statut veut demandoms iugement etc.

Hle. ad idem. Statut est fet en abreggement de delais mes celi qe prie ore estre receu auereit eide ceo serreit enlargement de delais kar cele de qi ele prie eide puet fere defaute et auer essone et autres delays auxi cum a la commune lei et ensi seruereit le statut de rien par quei etc.

Toud. Celi qe prie estre receu peut vocher a garrantie et le garant estre essoine et auer ses delais par quei etc.

Hle. Nest pas semblable kar le vocher est done en tiel cas par commune cours de lei et ensi nest pas leide prier par quei etc.

Toud. Prier eide est vocher a garrantie en soun cas par quei etc.

Et puis leide fust grante par la court.

II.³

Prier estre ressu ou il pria eide de ses parceners et habuit.

Peronel de Norford vynt en court et dit qe la ou vn bref fu porte vers vn A. qe fit default etc. nous vous dioms qe cely nad reins en

¹⁻² These words seem to be misplaced.

³ Text of (II) from *D.*

And the reason of this was that the demandant did not want to proffer himself till the end of the term ; and afterwards the defendant took the twenty shillings, and asked judgment of the default. Then Peronel prayed [to be received] etc. and she was received.

Scrope. Show your right.

Malberthorpe. Peronel telleth you that William that made default holdeth the tenements for the term etc. of the lease of Robert of Narford etc. After the death of Robert the right descended to this Peronel and to Maud as to two daughters and one heir etc. : and Peronel cannot show her right without Maud, and she prayeth aid of her.

Scrope. You alone prayed to be received etc. and you were received on the terms of your prayer ; and now you say that you cannot defend your right alone without the aid of another. Wherefore we ask judgment.

Toudeby. We have shown that the right doth not so wholly repose in our person that we can defend such right against you without etc.

Scrope. At the common law you would not have been received, but now the right to be received hath been given by statute,¹ which provideth that if those to whom the reversion is regardant pray to be received to defend their right they are to be received, but not otherwise : and since Maud is not here in person to make her application as the statute provideth, we ask judgment etc.

Herle, ad idem. The statute was made to shorten delays, but if Peronel, who is now praying to be received, should have aid, that would be to the increasing of delay, for she of whom she is praying aid might make default, or have herself essoined, and cause other delays, as at the common law, and so the statute would be of no good : therefore etc.

Toudeby. She that prayeth to be received can vouch to warranty, and the warrantor may get himself essoined and have his delays ; therefore etc.

Herle. That is not to the point, for voucher is given in such case by the common course of law, but the aid prayer is not ; wherefore etc.

Toudeby. In Peronel's case the aid prayer meaneth in fact a voucher to warranty, wherefore etc.

And afterwards aid was allowed by the Court.

II.

Prayer to be received, where the applicant prayed aid of her parceners, and it was granted.

Peronel of Narford came into court and said that, seeing that one A. against whom a writ had been brought had made default etc., we

¹ Statute of Westminster II. cap. 3.

les tenementz qa a [*sic*] terme de vie de nostre lees et prioms destre ressu et mist auant vne euidence qe tesmoigne et fust ressu.

Et puis dist—

Toudeby. Ele ne cleyme rens en les tenementz forqs estat de parcenerie descend de lor comune auncestor Iohn le Vaus ouesqe Maud sanz qi ele ne poet respondre et prie eide de luy.

Herle. Eide non deuez auer qe vous estes ressu a defendre vostre droit par statut qe voet qe ele soit ressu etc. si ele soit prest etc. a respondre et vous dit qe ne poet respondre sanz sa parceneur iugement et prioms seisine de terre.

Toudeby. Cele prier eide est en lieu de voucher et en cest cas s ieo vousisse voucher ieo serrei bien ressu iugement.

Herle. Statut voet qe la ou il est ressu a defendre son droit qe chescun delai soit tollet qe ne poet prier ne voucher nel plus.

Toudeby. Statut nous doune de estre ressu et nous sumes ressu par qi statut est serui par qi nous resuscite a la comune lei ou comune lei ne soeffre poynt qe parcener plede sanz eide de son parcener s voille eide prier iugement si nous ne deuoms eide auoir et voucher outre.

Note from the Record.

De Banco Rolls, Easter, 5 Edw. II. (No. 192), r. 121, Norfolk.

Thomas de Plumberewe et Willelmus de Foghtlestone per Iohannem de Houeworth attornatum predicti Willelmi optulerunt se quarto die versus Iulianam de Monte Forti de placito viginti acrarum terre et medietatis vnus messuagii cum pertinenciis in Wattone quas clamant vt Ius etc. et in quas eadem Iuliana non habet ingressum nisi per Petronillam de Nereford cui Iohannes de Vallibus illas dimisit qui inde iniuste etc. disseisiuit Ricardum Duraund auunculum predictorum Thome et Willelmi cuius heredes ipsi sunt post primam transfretacionem domini Henrici Regis aui domini Regis nunc in Vasconiam etc. Et ipsa non venit. Et alias fecit defaltam hic scilicet a die sancti Hillarii in .xv. dies anno regni Regis nunc tercio postquam fuit summonita etc. Ita quod tunc preceptum fuit vicecomiti quod caperet predicta tenementa in manum domini Regis etc. Et dies etc. Et quod

tell you that he hath naught in the tenements save for the term of his life by our lease, and we pray to be received ; and she tendered evidence which witnessed this, and she was received.

And afterwards—

Toudeby said : She claimeth in the tenements only an estate of parcenry with Maud, descended from their common ancestor, John of Vaux ; and she cannot answer without Maud, and she prayeth aid of her.

Herle. You ought not to have aid, for you are received to defend your right under the provisions of a statute¹ which saith that she may be received etc. if she be ready etc., to answer ; and she tells you that she cannot answer without her parcener. Judgment and we pray seisin of the land.

Toudeby. This aid prayer is given in lieu of voucher ; and in these circumstances if I want to vouch I am entitled to be received. Judgment.

Herle. The intention of the statute is that where one is received to defend his right all causes of delay may be done away with, and that he should neither make further prayer nor vouch.

Toudeby. The statute provideth that we are to be received, and we are received, and the purposes of the statute are accomplished, and we go back to the common law, and the common law doth not permit a parcener to plead without the aid of his co-parcener if he wisheth to pray aid. Judgment whether we cannot have aid and vouch over.

Note from the Record.

De Banco Rolls, Easter, 5 Edw. II. (No. 192), r. 121, Norfolk.

Thomas of Plumberewe² and William of Foghtlestone,³ by John of Hove-worth, attorney of the aforesaid William, offered themselves on the fourth day against Gillian of Montfort of a plea of twenty acres of land and a moiety of a messuage, with the appurtenances, in Watton, which they claim as their right etc. and into which the same Gillian hath no entry save by Peronel of Narford to whom John of Vaux leased them, which John unjustly disseised thereof Richard Duraund, uncle of the aforesaid Thomas and William, whose heirs these same be, after the first passage of the lord King Harry, grandfather of the lord King that now is, into Gascony etc. And Gillian doth not come. And at other time she made default here, to wit, in the quindenes of St. Hilary in the third year of the reign of the King that now is after that she had been summoned etc., so that the Sheriff was then commanded to take the aforesaid tenements into the hand of the lord King etc. And a day etc. and

¹ Statute of Westminster II, cap. 3. ² *Qu.* Plumstead. ³ *Qu.* Fodderstone.

Note from the Record—continued.

summoneat eam quod esset hic a die sancte Trinitatis in .xv. dies proximo sequentis. Ad quem diem vicecomes mandauit quod terra capta fuit in manum domini Regis etc. et quod summonuerat etc. Et super hoc tunc venerunt tam prefata Iuliana quam predicti Thomas et Willelmus et iidem Thomas et Willelmus precise ceperunt se ad predictam defaultam quam predicta Iuliana fecit etc. Et eadem Iuliana vadiauit eis inde legem suam etc. Ita quod continuat processum hinc inde scilicet a die Pasche in tres septimanas Super hoc Petronilla de Nerford venit et dicit quod predicta Iuliana tenet predicta tenementa ad terminum vite sue ex dimissione ipsius Petronille et que post decessum ipsius Iuliane ad ipsam Petronillam vel heredes suos reuerti debent et profert partem cuiusdam scripti indentati inde inter ipsam Petronillam et predictam Iulianam confecti quod predictas dimissionem et reuersionem testatur in forma predicta et petit quod ipsa per defaultam predictae Iuliane non amittat predicta tenementa set quod ipsa ad defensionem Iuris sui in hac parte admittatur etc. Et admittitur etc. Et eadem Petronilla dicit quod predicta tenementa dudum fuerunt in seisinā cuiusdam Iohannis de Vallibus patris ipsius Petronille et cuiusdam Matilde vxoris Willelmi de Ros de Hamelak cuius heredes ipsi sunt qui quidem Iohannes obiit seisitus de eisdem tenementis et aliis diuersis tenementis post cuius mortem hereditas ipsius Iohannis partita fuit inter ipsas Petronillam et Matildam filias et heredes etc. Ita quod predicta tenementa nunc petita similiter cum aliis tenementis assignata fuerunt ipsi Petronille in partem etc. Vnde dicit quod ipsa non Ius predictorum tenementorum deducere in iudicium sine predictis Willelmo et Matilda participibus etc. Et petit auxilium de ipsis Willelmo et Matilda etc. Et Thomas et Willelmus non possunt hoc deducere Ideo predicti Willelmus et Matilda summoneantur quod sint hic a die sancti Michaelis in .xv. dies ad respondendum simul etc. Et predicta Petronilla ponit in loco suo Ranulphum de Shotesham vel Willelmum Tebaud versus predictos Thomam et Willelmum de predicto placito etc.

10. LOCCUMBE *v.* LOCCUMBE.¹

Derein presentement porte par le fiz vers sa mere ou ele dit qe a ly apent a presenter pur resoun dun assignement fet a qi le fiz mesme fut partie ou le fitz trauersa lassignement et alii econtra.

Roger le fitz Ion porta son derein presentement vers Maude qe fut la femme le dit Ion dil auoueson de La Eglise de Estham et dit qe Ion son Pere fut seisi dil Maner de Estham a qi etc. qe presenta a meme La Eglise E. de Hales qe a son presentement etc.

¹ Reported by G. Names of the parties from the Record.

Note from the Record—*continued*.

to summon her that she should be here on the quindenes of the Holy Trinity next following. Upon which day the Sheriff sent word that the land had been taken into the hand of the lord King etc., and that he had summoned etc. And thereupon there came then both the aforesaid Gillian and the aforesaid Thomas and William, and the same Thomas and William did betake themselves precisely to the aforesaid default which the aforesaid Gillian did make etc. And the same Gillian did wage her law to them thereof etc., so that the process therein is to be continued hereafter, to wit, three weeks after Easter. Upon this Peronel of Narford cometh and saith that the aforesaid Gillian doth hold the aforesaid tenements for the term of her life by the lease of Peronel herself, and that after the death of the same Gillian they ought to revert to Peronel or to her heirs, and she maketh *profert* of part of a certain indented writing made between herself, Peronel, and the aforesaid Gillian, which doth witness the lease and reversion aforesaid in the form aforesaid; and she asketh that she may not lose the aforesaid tenements by reason of the default of the aforesaid Gillian, but that she herself may be received to defend her right in this matter etc. And she is received etc. And the same Peronel doth say that the aforesaid tenements were a short while ago in the seisin of a certain John of Vaux, father of this same Peronel, and of a certain Maud, wife of William of Ross of Hamelak, whose heirs these Peronel and Maud are; the which John died seised of these tenements and of divers other tenements. After the death of this John his inheritance was divided between these Peronel and Maud, daughters and heirs etc. to the effect that these tenements now in demand, together with other tenements, were assigned to this same Peronel as her share etc. And touching this, she saith that she cannot bring her right in the aforesaid tenements into judgment without the aforesaid William and Maud, parceners etc. And she asketh aid of these William and Maud etc. And Thomas and William cannot gainsay this. So the aforesaid William and Maud are to be summoned that they be here on the quindenes of St. Michael to answer together with etc. And the aforesaid Peronel doth put in her place Ralph of Shotesham or William Tebaud against the aforesaid William and Thomas of the aforesaid plea etc.

10. LOCCUMBE *v.* LOCCUMBE.

Darrein presentment brought by a son against his mother. The mother claims the presentation by reason of an assignment to which the son was a party. The son denied that the assignment was as alleged, and on this issue was joined.

Roger the son of John brought his *darrein presentment* against Maud that was wife of the said John of the advowson of the Church of Easthams, and said that John his father was seised of the manor of Easthams, to which etc. and that he presented to this same church one E. of Hales, who on his presentation etc.

Pass. Roger le fitz Ion entra apres la mort Ion son Pere en tut son heritage a qi les auouesons dil Eglise de Estham etc. furent apendauntz issint qe entre Roger et Maude a couynt qe queloure qe les auantditz .ij. Eglises se voidissent issint qe Roger presentereit .ij. fet et ele a la terce foye et vous dioms qe la Eglise de C. se voidit .ij. foit pus la mort Ion nostre baroun et pus lassignement issint qe a la premiere voidance Roger presenta vn William etc. par qi resignement etc. **par** qi il presenta vn Adam par qi mort La Eglise est ore voyde et issi aly apent a presenter par resoun de turn en noun de douwer.

Denom. Lassignement dount vous parlet si est en coudre comune dreyt auet vous reen dil assignement.

Pass. Ieo le voil auerer etc.

Scrop iustice. Responet si lassignement seit tiel com il allegge qe asset souent auoms veu tel assignement.

Denom. Qe lasignement ne fut pas tel prest etc.

Par qi lassise fut agarde etc.

Note from the Record.

De Banco Rolls, Easter, 5 Edw. II. (No. 192), r. 206d., Somerset.

Assisa venit recognitura quis aduocatus tempore pacis presentauit vltimam personam que mortua est ad ecclesiam de Loccumbe que **vacat** et cuius aduocacionem Iohannes de Loccumbe clamat versus Iohannam que fuit vxor Hugonis de Loccumbe. Et vnde dicit quod quidam Hugo de Loccumbe pater ipsius Iohannis cuius heres ipse est vltimo presentauit ad predictam ecclesiam magistrum Willelmum Roges clericum suum qui ad presentacionem suam fuit admissus et institutus tempore pacis tempore Edwardi Regis patris domini Regis nunc per cuius mortem predicta ecclesia modo vacat etc. Et Iohanna dicit quod ad ipsam spectat presentare etc. Dicit enim quod post mortem predicti Hugonis quondam viri etc. predictus Iohannes assignauit ei dotem suam de libero tenemento predicti Hugonis qui quidem Hugo fuit aduocatus duarum ecclesiarum scilicet de Loccumbe et de Selewourthi etc. Ita quod assignacio dotis sue de aduocacionibus predictis facta fuit in hac forma scilicet quod quocienscunque contigisset vnam ecclesiarum illarum vel ambas vacare etc. Semper idem Iohannes haberet duas presentaciones suas continuas etc. et quod ipsa Iohanna haberet presentacionem suam in tercia vacacione etc. Et dicit quod post assigna-

Passeley. Roger the son of John, after the death of John his father, entered upon his whole inheritance, to which the advowsons of the churches of Easthams etc. were appendant; and it was agreed between Roger and Maud that when the aforesaid two churches should become vacant Roger should present to two vacancies in succession and that Maud should present to the third; and we tell you that the church of C. became vacant twice after the death of John our husband and subsequently to the assignment; so that at the first avoidance Roger presented one William etc., by whose resignation etc., wherefore he presented one Adam, by whose death the church is now vacant, and so it belongeth to us to present by reason of our turn in name of dower.

Denham. The assignment of which you speak is against the principle of the law.¹ Have you anything to witness the assignment?

Passeley. I will aver it etc.

SCROPE J. If the assignment be such as he allegeth answer it, for often enough have we seen such an assignment.

Denham. The assignment was not such an one. Ready etc.

And therefore the assize was awarded.

Note from the Record.

De Banco Rolls, Easter, 5 Edw. II. (No. 192), r. 206d., Somerset.

The Assize came to make recognition what patron in time of peace presented the last parson, who is dead, to the church of Loccumbe,² which is vacant, the advowson of which John of Loccumbe doth claim against Joan that was wife of Hugh of Loccumbe. And thereof he doth say that a certain Hugh of Loccumbe, father of this same John whose heir this John is, did last present to the aforesaid church Master William Roges, his clerk, who upon his presentation was admitted and instituted in time of peace in the time of King Edward, father of the lord King that now is, by whose death the aforesaid church is now vacant etc. And Joan saith that the right to present etc is regardant to her, for she saith that after the death of the aforesaid Hugh, that was aforetime husband etc., the aforesaid John did assign dower to her of the freehold of the aforesaid Hugh, the which Hugh was patron of two churches, to wit, of Loccumbe and of Selworthy etc.; so that assignment of her dower in respect of the aforesaid advowsons was made in this form, to wit, that as often as it should happen that one or both of those churches should be vacant etc. the same John should always have two successive presentations and that the said Joan should have the presentation at the third vacancy etc.

¹ *Denham* probably had in mind Bracton's statement (f. 76a) *Vxor autem post mortem viri sui in assignatione dotis nichil capiat . . . de aduocatione ecclesiarum ratione tertie partis sue*. Though he makes certain exceptions. See also

Britton, II, pp. 259 and 281 (ed. Nichols). In a later case (*Year-Books*, Mich. 9 Edward II, p. 287) SCROPE J. said *Femme puet demander la tierce partie dauowson par bref de Dower*.

² *Qu. Locking*.

Note from the Record—continued.

cionem illam predicta ecclesia de Selewourthi vacauit ad quam predictus Iohannes presentauit quemdam Iohannem Roges clericum suum qui ad presentacionem suam fuit admissus et institutus Et postea eadem ecclesia vacante per resignacionem eiusdem Iohannis Roges predictus Iohannes de Loccumbe iterato presentauit ad eandem quemdam Andream de Ralegh clericum suum qui ad presentacionem suam nunc est admissus et institutus etc. per quod in ista vacacione ad predictam ecclesiam de Loccumbe modo vacantem ad ipsam Iohannam pertinet presentare virtute assignacionis predictae etc. Et Iohannes dicit quod ad ipsum et non ad predictam Iohannam pertinet ad ecclesiam predictam presentare etc. quia dicit quod assignacio dotis ipsius Iohanne de aduocacionibus predictis nuncquam facta fuit per ipsum Iohannem sicut eadem Iohanna dicit. Et hoc paratus est verificare per assisam loco Iurate capiendam Et Iohanna similiter Ideo capiatur assisa loco Iurate set ponitur in respectum vsque in Octabis sancte Trinitatis per defectum recognitorum quia nullus venit. Ideo vicecomes habeat corpora etc.

Postea ad diem illum veniunt partes per attornatos suos hic et similiter Iuratores de consensu parcium electi qui dicunt super sacramentum suum quod post mortem predicti Hugonis de Loccumbe patris predicti Iohannis cuius heres ipse est Ita conuenit inter predictum Iohannem et predictam Iohannam quod quocienscunque predictus Iohannes bis presentaret ad ecclesiam de Loccumbe predicta Iohanna in tertia vacacione ratione dotis sue presentaret ad eandem ecclesiam. Et si predictus Iohannes presentasset bis ad predictam ecclesiam de Selewourthi eadem Iohanna ad eandem ecclesiam presentaret in tertia vacacione eiusdem ecclesie ad eandem ecclesiam et non in forma quam predicta Iohanna in placitando asserit Et dicunt [quod] predicta ecclesia de Loccumbe post mortem predicti Hugonis quondam viri sui modo primo vacat Et dicunt quod predicta ecclesia valet per annum quadraginta marcas et quod eadem ecclesia est vacans Ideo consideratum est quod predictus Iohannes recuperet uersus eam presentacionem suam predictam Et habeat breue Episcopo Bathonensi et Wellensi quod ad presentacionem predicti Iohannis ad predictam ecclesiam idoneam personam admittat Et similiter recuperet uersus eam viginti marcas scilicet medietatem valoris ecclesie etc. eo quod tempus semestre nondum elabitur Et Iohanna in misericordia etc. Et super hoc idem Iohannes elegit sibi allocari medietatem terrarum predictae Iohanne et omnia bona preter boues etc. Ideo habeat breue per statutum¹ Quia etc. scire facias hic in octabis Sancti Iohannis Baptiste etc.

Dampna .xx. marce vnde clericis .xl.s.

¹ Statute of Westminster II. cap. xviii.

Note from the Record—*continued.*

And she saith that subsequently to that assignment the aforesaid church of Selworthy became vacant, to which the aforesaid John did present a certain John Roges, his clerk, who upon his presentation was admitted and instituted. And the same church being afterward vacant by the resignation of the same John Roges, the aforesaid John of Loccumbe did a second time present to the same a certain Andrew of Raleigh, his clerk, who upon his presentation is now admitted and instituted etc. ; wherefore the right to present in the present vacancy to the aforesaid church of Loccumbe, now vacant, is regardant to the said Joan in virtue of the aforesaid assignment etc. And John saith that it doth belong to him and not to the aforesaid Joan to present to the aforesaid church etc., for he saith that assignment of dower to this same Joan of the advowsons aforesaid was never made by the same John in such manner as the same Joan doth say. And this he is ready to aver by assize to be taken instead of a jury. And Joan saith likewise. So an assize is to be taken instead of a jury, but it is respited until the octaves of the Holy Trinity by reason of the lack of recognizors, for none cometh. So the Sheriff is to have their bodies etc.

Afterwards upon that day the parties come here by their attorneys, and likewise the jurors, chosen by consent of the parties, who upon their oath do say that after the death of the aforesaid Hugh of Loccumbe, father of the aforesaid John, whose heir John is, it was agreed between the aforesaid John and the aforesaid Joan that whenever the aforesaid John should have presented twice to the church of Loccumbe the aforesaid Joan should present to the same church at the third vacancy in right of dower ; and if the aforesaid John should have presented twice to the aforesaid church of Selworthy the same Joan should present to the same church on the third vacancy of the same church ; and that the assignment was not in the form that the aforesaid Joan in her plea asserteth it to be. And they do say that the aforesaid church of Loccumbe is now vacant for the first time since the death of the aforesaid Hugh, aforetime her husband, and they do say that the aforesaid church is worth forty marks a year, and that the same church is vacant. Therefore it is considered that the aforesaid John do recover against her his presentation aforesaid. And he is to have a writ to the Bishop of Bath and Wells that he shall admit a fit person to the aforesaid church upon the presentation of the aforesaid John. And that he should likewise recover against her twenty marks, to wit, a moiety of the value of the church etc. because a period of six months hath not yet elapsed. And Joan is in mercy etc. And upon this John elected to have a moiety of the lands of the aforesaid Joan and all her chattels except bullocks etc. So he is to have a writ under the statute, ' Because etc. you are to make known here on the octaves of St. John the Baptist etc.' ¹

Damages twenty marks, of which forty shillings to the clerks.

¹ *I.e.* a writ of *elegit* in respect of provisions of the Statute of Westminster
damages recovered by assize, under the II. cap. xviii.

11. TAUMBES v. SKEGNESS.¹

Trespas ou le conte fut abatu pur repugnance vt patet infra.

Vn bref de Trespas fu porte vers vn frerre de vne maison de ceo qil deuoit auoir venu a force et as armes et prendre e emporte vn escript etc.

Toudeby. Il est frere de Priorie de O. et deit obedience a la Prioressse et demandoms iugement si sanz la Prioressse deiue estre respounable.

Russel. Ceo est vn plee personel de qi il mesme deit estre respounable par sa persone et demandoms iugement.

Toudeby. Cel plee voet damages recouerir et si riens serroit vers lui recouerir et ceo serreit a bien la Prioressse et de la eglise pur ceo qil nad mesme rens propre et ceo ne serreit pas raison si la Prioressse ne fut nome iugement.

Lambt. Si le bref fu porte vers lui sanz nomer le frerre ascun chose serreit a maintenir qil respoundreit de son fait demesne personel mes del hure qe vous ly nometz frere et issint le supposetz vous dautre obedience vostre raison nest pas si bien maintainable.

Et puis Weyuent il cela excepcioun de gree et disoient qe la ou il auoient conte qe la ou il bailla vn escript en bone feye a garder la dut le frerre venir a force et as armes et lescrip prendre et emporte entant come il dit prest etc. si supposa il le reuers de bail et issint est le conte repugnant.

Note from the Record.

De Banco Rolls, Easter, 5 Edw. II. (No. 192), r. 138, Lincolnshire.

Frater Walterus de Skegnesse Magister de Nounecotun in misericordia pro pluribus defaltis etc.

Idem Walterus attachiatus fuit ad respondendum Heruico de Taumbes de Keleby et Agneti vxori eius de placito quare cum eadem Agnes quoddam scriptum conuencionale prefato Magistro apud Nuunecotun bona fide tradidisset inspiciendum predictus frater Walterus scriptum illud vi et armis cepit et asportauit et alia enormia ei intulit ad graue dampnum

¹ Reported by *D.* Names of the parties from the Record.

11. TAUMBES *v.* SKEGNESS.

Trespass, where the counting was abated for inconsistency as doth appear below.

A writ of trespass was brought against a brother of a House alleging that he had come with force and arms and had taken and carried away a writing etc.

Toudeby. He is a brother of the Priory of O., and he oweth obedience to the Prioress. Judgment whether he ought to answer without the Prioress.

Russell. This is a personal plea for which he ought to be answerable in his own person, and we ask judgment.

Toudeby. This plea contemplateth the recovery of damages, and if aught be recovered against him it would have to come from the goods of the Prioress and the Church, for he hath naught of his own; and therefore it would not be just if the Prioress were not named [in the writ]. Judgment.

TRIKINGHAM J. If the writ were brought against him without describing him as a brother, then you¹ would have some ground for maintaining that he was personally responsible for his own act, but since you have described him as being a brother, and consequently suppose that he is in the obedience of another, your argument is scarcely maintainable.

And *Toudeby* afterwards voluntarily waived this plea, and said that while the other side had counted that they had bailed a writing to the brother in good faith that he might take care of it, they went on to allege that he came with force and arms and took and carried away the writing; and, by so alleging, they supposed the very opposite of a bailment, and so the counting is inconsistent.

Note from the Record.

De Banco Rolls, Easter, 5 Edw. II. (No. 192), r. 188, Lincolnshire.

Brother Walter of Skegness, Master of Nun Coton,² in mercy for several defaults etc.

The same Walter had been attached to answer Hervey of Taumbes of Kelby and Agnes his wife of a plea why when the same Agnes had in good faith delivered to the aforesaid Master at Nun Coton a certain writing of agreement for his inspection, the aforesaid brother Walter that writing with force and arms did take and carry away and other injuries did to her, to the

¹ I.e. *Russell*.

Alan de Muncels in the reign of Henry

² A Cistercian nunnery founded by the First.

Note from the Record—continued.

predictorum Heruici et Agnetis et contra pacem etc. Et vnde iidem Heruicus et Agnes per Willelmum de Crandene attornatum suum queruntur quod cum predicta Agnes die veneris proxima post festum Apostolorum Philippi et Iacobi apud Nuunecoton predictum scriptum conuencionale bona fide tradidisset inspiciendum predictus frater Walterus scriptum illud vi et armis scilicet Gladiis Arcubus et sagittis cepit et asportauit contra pacem etc. vnde dicunt quod deterioratus [*sic*] est et dampnum habet ad valenciam decem librarum Et inde producunt sectam etc.

Et frater Walterus per Robertum de Keleby attornatum suum venit Et defendit vim et iniuriam quando etc. Et dicit quod non debet ei ad hoc breue respondere Quia dicit quod cum in breui illo contineatur predictam Agnetem scriptum predictum eidem Magistro bona fide tradidisse inspiciendum et postea in eodem breui inseritur ipsum fratrem Walterum scriptum illud vi et armis cepisse et asportasse contra pacem etc. que quidem contrariantur etc. petit iudicium de breue etc.

Et Heruicus et Agnes non possunt hoc dedicere Ideo predictus frater Walterus inde sine die et predicti Heruicus et Agnes nichil capiant per breue suum set sint in misericordia pro falso clamore.

12. BRANDESTON v. BURGH.¹

Couenaunt condicionel.

Iohane qe fut la fille G. Geroud porta son bref de couenaunt vers mestre Aleyn de saloup. Et dit qe la ou il couuynt entre eus a Saloup qe le dit mestre Aleyn mariereit la dite Iohane solom ceo qe lestat et la Condicioun de sa Parente démesne et qil la trouereit sa sustenance en viuere et vesture com apent dek atant qele fut marie et diseint qele ne fut pas marie ne sustenance renablement troue atort etc.

Herle. Vous auet Conte de la contract qe se fyt en Saloup en mesme la Counte et biet recouerer sustenance a terme de vie si nous ne la vosissoms marier qe countreuaut vn franctenement Et le bref est porte en le Counte de Stauford iugement si a cel bref. Et de ceo fut oste. Pur ceo qe de Couenaunt dettes et annuieitez de chanbre homme put porter bref en le counte ou le contract se fyt ou en autre.

¹ Reported by G. Names of the parties from the Record.

Note from the Record—*continued.*

grievous damage of the aforesaid Hervey and Agnes, and against the peace etc. And thereof the same Hervey and Agnes by William of Crandene¹ their attorney do complain that when the aforesaid Agnes on the Friday next after the Feast of the Apostles Philip and James did at Nun Coton deliver the said writing of agreement in good faith to the aforesaid brother Walter for his inspection he did with force and arms, to wit, with swords, bows and arrows, that writing take and carry away against the peace etc.; whereby they say they have suffered loss and have damage to the amount of ten pounds. And thereof they do produce suit etc.

And brother Walter by Robert of Kelby, his attorney, doth come and doth deny force and injury when etc., and he doth say that he ought not to answer them under this writ; for he saith that while it is laid in the writ that the aforesaid Agnes did in good faith deliver the writing aforesaid to the same master for his inspection it is afterwards laid in the same writ that that same brother Walter did with force and arms that same writing take and carry away against the peace etc., which things be contrariant etc., and he asketh judgment of the writ etc.

And Hervey and Agnes cannot deny this. So the aforesaid brother Walter is to go away without day, and the aforesaid Hervey and Agnes are to take naught by their writ but are to be in mercy for their false claim.

12. **BRANDESTON v. BURGH.**²

Conditional agreement.

Joan that was the daughter of G. Gerard brought her writ of covenant against Master Alan of Shrewsbury, and she said that although an agreement was made between them at Shrewsbury that the said Master Alan should procure a marriage for the said Joan suitable to the estate and condition of her own parentage, and that he should provide her with suitable board and clothing from that time until that she was married, she was not married, and the defendant had not provided her with reasonable maintenance; wrongfully etc.

Herle. You have counted of the contract that was made in Shrewsbury in the county of the same, and you are seeking to recover maintenance for the term of your life if we should not procure you a marriage, and that amounteth to a freehold. And the writ is brought in the county of Stafford. Judgment whether to that writ [etc.].—And this exception was not allowed, because a writ of covenant in respect of debts and annuities issuing from the obligee's chamber may be brought either in the county wherein the agreement was made or in any other.

¹ *Qu.* Crane End.² See the *Introduction*, p. xxxvii.

Pass. Vous auet Counte qe nous sumes ale etc. en .ij. choses scilicet de ceo qe vous nestes pas marie. Et autre de ceo qe sa sustenance est sustrete et biet recouerer damages encore dil vn et dilautre nous demandoms iugement dil heure qe le mariage dont vous estes pleynt est a nostre volunte detant nous trouoms vostre sustenance et vous biet recouerer damages de vostre mariage saunt tort assigner en nous etc. en tant qil nad my certain tenps limite deinz quele tenps ele serroit marie si a tele counte etc.

Herui. Si ieo moy oblige a vous en Mille liueres et en lescript il nad pas ior de paye nest pas le dette due meyntenant apres la confeccion del escript certes si est.

Herle. Seit ore issi qe ieo moy oblige de trouver sa sustenance etc. a taunk ieo ly pay mille liueres etc. nest ceo a ma volunte de trouver sa sustenance saunt iames payer si ieo voil certes si est dont si nous la trouoms sustenance le mariage si est a nostre volunte. Et ele bie recouerer damages ausi auaunt dil mariage com dil sustenance iugement etc.

Et habuit diem etc. }

Note from the Record.

De Banco Rolls, Easter, 5 Edw. II. (No. 192), r. 54d., Norfolk.

Willelmus de Berg Archidiaconus Berkensis in misericordia pro pluribus defaultis etc.

Idem Archidiaconus summonitus fuit ad respondendum Iohanne filie Margarete que fuit vxor Hugonis de Braundestone de placito quod teneat ei conuencionem inter eos factam de ipsa Iohanna decenter et competenter maritanda prout status et condicio sue parentele exigit et requirit necnon de ipsa Iohanna in omnibus suis necessariis sumptibus ipsius Willelmi sustentanda quousque modo predicto per ipsum fuerit maritanda. Et vnde eadem Iohanna per attornatum suum dicit quod cum conuenisset inter eos die Mercurii in septimana Pasche anno Regni Regis Edwardi patris domini Regis nunc Tricesimo apud Sarum scilicet quod predictus Willelmus ipsam Iohannam decenter et competenter maritaret prout status et condicio sue parentele exigit etc. et eciam quod ipsam Iohannam in omnibus suis necessariis sustentaret quousque modo predicto per ipsum fuisset maritata predictus Willelmus prefatam Iohannam nondum maritauit nec ipsam in aliquibus suis necessariis sustentauit secundum formam conuencionis predictae Et licet idem Willelmus sepius requisitus tenendi conuencionem predictam illam hucusque tenere contradixit et adhuc contradicit vnde dicit quod deteriorata est et dampnum habet ad valenciam Mille librarum Et inde

Passeley. You have counted that we are bound etc. in two things, to wit, that you are not married, and also that her maintenance is not provided; and you are seeking to recover damages in respect of both one and the other. Since the marriage, in respect of which you make complaint, is at our pleasure so long as we provide your maintenance, and since you are seeking to recover damages in respect of your marriage without assigning any tort in us, inasmuch as there is no certain time limited within which she should be married, judgment whether to such a counting etc.

STANTON J. If I bind myself to you in a thousand pounds, and no day for payment be assigned in the writing, is not the debt due immediately after the execution of the writing? Certainly it is.

Herle. Suppose now it be that I bind myself to provide her maintenance etc. until I pay her a thousand pounds etc., is it not at my pleasure to go on providing her with maintenance without ever paying her the money, if I choose to do so? Certainly it is. Consequently if we provide maintenance for her, the marriage is at our pleasure. And she is seeking to recover damages as well in respect of the marriage as of the maintenance. Judgment etc.

And he had a day etc.

Note from the Record.

De Banco Rolls, Easter, 5 Edw. II. (No. 192), r. 54d., Norfolk.

William of Burgh, Archdeacon of Berkshire, is in mercy for several defaults etc.

The same Archdeacon was summoned to answer Joan daughter of Margaret that was wife of Hugh of Brandeston of a plea that he execute the agreement made between them to procure a fit and suitable marriage for the same Joan, such as her estate and the condition of her parentage call for and require and for the provision of the same Joan in all her necessities at the charges of the said William until that through him she shall have been so married. And touching this the same Joan doth say by her attorney that though it was agreed between them on the Wednesday in Easter week in the thirtieth year of the reign of King Edward, father of the lord King that now is, at New Sarum to wit, that the aforesaid William should procure a fit and suitable marriage for the said Joan such as the estate and condition of her parentage require etc., and also that he should maintain the said Joan in all her necessities until that she was married as aforesaid through him, the aforesaid William hath not yet procured a marriage for the aforesaid Joan, nor hath he provided her with any of her necessities in accordance with the tenor of the aforesaid agreement; and although the same William hath been often required to perform that aforesaid agreement he hath hitherto refused to perform it and still doth refuse, whereby she saith that she hath suffered loss and hath damage to the amount of a thousand pounds. And thereof she doth

Note from the Record—*continued.*

producit sectam etc. Et profert quoddam scriptum sub nomine predicti Willelmi quod predictam conuencionem testatur in forma predicta etc.

Et Willelmus per attornatum suum venit Et defendit vim et Iniuriam quando etc. Et dicit quod non debet ei inde ad hoc breue respondere etc. Dicit enim quod cum in predicto scripto contineatur quod idem Willelmus per conuencionem predictam tenetur sustentare predictam Iohannam quousque per ipsum Willelmum fuerit maritata sicut predictum est ac eadem Iohanna per narrationem suam nititur recuperare versus eum dampna sua de eo quod ipsa nondum est maritata et de sustentacione ei non inventa etc. cum non sit obligatus per scriptum suum ad ipsam infra certum tempus maritandam set tantum ad sustentacionem predictam eidem Iohanne inueniendam quousque etc. per quod de eo quod ipsa nondum est maritata nullus defectus adhuc sibi poterit imputari etc. vnde petit iudicium etc. Dies datus est eis hic de audiendo iudicio suo hic a die Sancte Trinitatis in .xv. dies etc. in eodem statu quo nunc etc. Ad quem diem venerunt tam predicta Iohanna quam predictus Willelmus per attornatum ipsius Willelmi etc. Et idem bene cognoscit predictum scriptum etc. Set dicit quod predicta Iohanna iniuste queritur etc. Dicit enim quod ipse die lune proxima post clausum Pasche anno Regni domini Regis nunc tercio apud nouam Sarum in presenciam quorundam Iohannis Pouerel Iohannis Chynnot Iohannis Cleymund Willelmi Euerard Walteri de Sihalcoumbe et Henrici Baudri optulit eidem Iohanne decens et competens maritagium scilicet de quodam Petro filio et herede Roberti de La Mare nubilis etatis cuius hereditas valet centum libras per annum etc. quod quidem maritagium eadem Iohanna recusauit etc. Et hoc paratus est verificare etc. Et quo ad sustentacionem predictam inueniendam etc. dicit quod a tempore confeccionis predicti scripti fuit ipsa Iohanna commorans apud Iatingdene in Comitatu Berkeire et apud Sarum in Comitatu Wiltescire sumptibus ipsius Willelmi qui quidem Willelmus eidem Iohanne decentem sustentacionem in omnibus suis necessariis secundum formam conuencionis predicte inuenit vsque ad predictum diem lune quo ipse maritagium predictum ei optulit etc. vnde petit iudicium etc.

Et Iohanna dicit quod a tempore confeccionis predicti scripti fuit ipsa commorans apud Lappeworthe in Comitatu Waruici et apud predictam villam de Iatingdene sustentata sumptibus predicte Margarete matris sue sine absque hoc quod predictus Willelmus sustentacionem ei inuenit secundum formam conuencionis predicte sicut idem Willelmus asserit Et hoc petit quod inquiratur per patriam etc.

Et eadem Iohanna quo ad hoc quod predictus Willelmus asserit ipsam predictum maritagium ei oblatum sicut predictum est recusasse bene defendit quod ipsa nunquam predictis die et anno recusauit competens maritagium sicut idem Willelmus ei imponit Et hoc parata est defendere contra ipsum et sectam suam per legem suam sicut curia consideret Dies

Note from the Record—*continued.*

produce suit etc. And she maketh *profert* of a certain writing in the name of the aforesaid William which doth witness the aforesaid agreement in the form aforesaid etc.

And William doth come by his attorney and he doth deny force and injury when etc., and he saith that he ought not to answer her to this writ etc., for he saith that while it is contained in the aforesaid writing that the same William is bound to maintain the aforesaid Joan in accordance with the aforesaid agreement until that she shall be married through the same William as is aforesaid, the same Joan by her counting is attempting to recover her damages against him on the ground that she is not yet married and also for his failure to maintain her etc., though he is not bound by his writing to procure a marriage for her within any certain time, but only to provide for the same Joan the aforesaid maintenance until that etc. Wherefore, no breach can be imputed to him by reason of the fact that she is not yet married etc.; and thereof he asketh judgment etc. A day is given them here to hear their judgment here in the quindenies of the Holy Trinity etc. in the same condition as now etc. Upon which day came the aforesaid Joan, as well as the aforesaid William by the attorney of the aforesaid William etc. And he doth freely admit the aforesaid writing etc. But he saith that the aforesaid Joan doth complain unjustly etc., for he saith that he himself on the Monday next after the clause of Easter in the third year of the reign of the lord King that now is, at New Sarum in the presence of John Poverel, John Chynnot, John Claymund, William Everard, Walter of Sihalcoumbe and Harry Baudry did offer to the same Joan a fit and suitable marriage, to wit, with a certain Piers, son and heir of Robert Delamere, of marriageable age, whose inheritance is worth a hundred pounds a year etc., the which marriage the same Joan did refuse etc. And this he is ready to aver etc. And as to the provision of the aforesaid maintenance etc. he doth say that at the time of the making of the aforesaid writing the said Joan was dwelling at Yattendon in the county of Berkshire and at Sarum in the county of Wiltshire at the charges of this same William, the which William did provide for the same Joan a fitting maintenance in all things necessary to her in accordance with the tenor of the aforesaid agreement until the aforesaid Monday on which he did offer her the aforesaid marriage etc. And of this he doth ask judgment etc.

And Joan saith that at the time of the making of the aforesaid writing she was dwelling at Lapworth in the county of Warwick, and that she was maintained at the aforesaid vill of Yattendon at the charges of the aforesaid Margaret, her mother, and that the aforesaid William made no provision for her maintenance, in accordance with the tenor of the aforesaid agreement, as the same William doth assert. And she doth ask that this be inquired of by the country etc.

And touching that which the aforesaid William doth say that she did refuse the aforesaid marriage by him offered to her, as is aforesaid, the same Joan doth deny that she ever on the aforesaid day and year did refuse a fitting wedding as the same William doth charge against her. And this she is prepared to maintain against him and his suit in such way as the Court shall

Note from the Record—*continued*.

datus est partibus predictis hic In Octabis Sancti Iohannis Baptiste Et de die in diem etc. Postea ad diem illum venerunt tam predicta Iohanna quam predictus Willelmus in propriis personis suis Et predicta Iohanna retraxit se de breui suo predicto etc. Ideo predictus Willelmus inde sine die Et predicta Iohanna et plegii sui de proseguendo in misericordia etc. Quere nomina plegiorum etc.

13. HAKUN *v.* FAIRWEATHER.¹

Nota disseisine ou il allega qil auoit enqueste pendant en plus haut court de mesme la disseisine et demanda iugement etc. Et pur ceo qe lenqueste ne fut autre mes a dereyner la garrantie tant sol etc. vt patet infra.

Robert le fuitz Elys de Haclone porta vne assise de nouele disseisine vers Oliuer Farueder et se pleynt estre disseisi de .ij. acres de terre.

Malm. Assise ne deit estre qe nous vous dioms qe vn Robert fitz Reynaud tiel au tiel terme a Westminstre porta vn bref dentre de mesme les tenementz vers nous qe suppose qe nous entrames par mesme cesti Robert issint qe nous lui vouchames a garrantie Robert vynt et dit qil ne deuoit garrantir qar il dit qil lui auoit disseisi de quele disseisine il auoit accioun a demander les tenementz en demesne et sur ceo ioynt lenqueste entre eux qe vnqore pent en plus haut court a trier la disseisine iugement si pendant cel enqueste assise deit estre.

Herle. Tout fu la disseisine troue en plee dentre qest en plus haut Court Robert qore se pleynt ne recouereit pas seisine de terre qele ne fraient qe a trier la garantie par qi cele enqueste ne targerá pas lassise. Estre ceo si ceste assise se targast ore par lenquest quest pendant grant duresce ensuwerait par cas qe si par lenqueste seit troue qe Oliver

¹ Reported by *D.* Names of the parties from the Record. See the note on the opposite page.

Note from the Record—*continued*.

determine. A day is given to the aforesaid parties here in the octaves of St. John the Baptist, and from day to day etc. Afterwards upon that day came both the aforesaid Joan and the aforesaid William in their own persons. And the aforesaid Joan did withdraw herself from her aforesaid writ etc. So the aforesaid William is to go hence without day, and the aforesaid Joan and her pledges for prosecution are in mercy. The names of the pledges etc. are to be inquired of.

13. HAKUN v. FAIRWEATHER.¹

In a writ of novel disseisin the tenant objected that a writ of entry, whereby question of the same disseisin was raised, was pending in a higher court, and asked judgment on this. But because the effect of these latter proceedings would be merely to decide a question of liability to warranty the objection was not allowed, as appeareth below.

Robert the son of Ellis of Hakun brought an assize of novel disseisin against Oliver Fairweather, and complained of being disseised of two acres of land.

Malberthorpe. Assize ought not to be, for we tell you that one Robert, son of Reynold, did in a certain term at Westminster bring a writ of entry in respect of these same tenements against us, the which writ did suppose that we entered by this Robert. We therefore vouched this Robert to warranty, and he came and said that he was not bound to warranty, for he said that Oliver had disseised him, and that in respect of that disseisin he, Robert, had a right of action to claim the tenements in demesne; and upon that an inquest was joined between them, which is still pending in a higher court to try the disseisin. Judgment whether during the pendency of that inquest an assize ought to be taken.

Herle. Even though disseisin should be found under the writ of entry that is pending in the higher court, Robert, the present complainant, would not recover seisin of the land, for all they would be trying would be the liability to warranty, and therefore that inquest ought not to delay the assize. Further, if this assize be now delayed through the pendency of the inquest great hardship might peradventure follow, for if it were found by the inquest that Oliver did disseise Robert,

¹ The two following reports are of two different actions concerned with the same set of facts. The first report deals with an assize of novel disseisin tried, probably at Nottingham, before SPIGURNEL J. and his fellow commissioners. The Roll of these

Assizes has not been preserved. The second report deals with a writ of entry tried in the higher court at Westminster. The record of the proceedings is given in the Note from the Record. See the *Introduction*, p. xxx.

disseisa Robert qore porte ceste assise Oliuer perdra sa garrantie par qi le disseisi recouereit seisine de terre vers le tenant issint qe cesti bref qore porte abatereit par default de tenant.

Par qi lassise fut agarde etc.

14. HAPELSTHORPE v. FAIRWEATHER.¹

Entre.

Vn home porta soun bref dentre vers Richard de B. Richard vocha a garant vn S. qe vient et dist qe garrantir ne li deit car mesme celi Richard lauoit disseisi de mesmes ceux [tenemenz] par quei il auoit lassise de nouele disseisin et moustra auant la patente de mesmes lassise et demanda iugement sil li dust garrantir etc.

Russel. Veet issi vostre fet par le quel vous nous deuēt garrantir est ceo uostre fet ou ne mie.

Denum. Ieo nai pas mestre a ceo respoundre car ieo di qe vous me disseisites Et si ieo vous garrantise ore dount fust la disseisine purge et nous ne nostre assise barre par quei etc.

Russel. Vous demandez ceo qe nous aueimes de vos lier et vous meimes [mettet] auant vostre fet sur le quel vous issitis denparler par que il couent qe vous responet au fet.

Denum. A ceo nay ieo mester car ieo di vt prius.

Scrop Justice. Vous auez demande ceo qil aueit de vous lier etc. la feites vous folie car einz ceo qe vous demandastes etc. vous deueret auer dist ceo qe vous ore dites.

Denum. Ieo ne fu pas issi a ceu tens ore die ieo qil me disseisi et nous auoms nostre etc. iugement etc.

Note from the Record.

De Banco Rolls, Easter, 5 Edw. II. (No. 192), r. 135, Nottinghamshire.

Robertus filius Reginaldi de Hapelesthорpe per attornatum suum petit versus Oliuerum Fayrweder de Littleburghe duas acras prati et medietatem vnus acre terre cum pertinenciis in Littleburghe per vnum breue Et quatuor acras terre et dimidiam et vnam acram prati et dimidiam cum pertinenciis in Screttone per aliud breue vt Ius et hereditatem suam et in quas idem Oliuerus non habet ingressum nisi per Robertum filium Elie Hakun qui illas ei dimisit qui inde iniuste etc. disseisiuit Reginaldum de Hapelesthорpe patrem predicti Roberti cuius heres ipse est post primam etc.

¹ Reported by R. Names of the parties from the Record.

that now bringeth this assize, Oliver will lose his warranty, whereby the disseised [i.e. Robert] would recover seisin of the land against the tenant, [i.e. Oliver,] to the effect that this writ which is now brought would abate for default of a tenant.

Wherefore the assize was awarded etc.

14. HAPLESTHORPE v. FAIRWEATHER.

Entry.

A man brought his writ of entry against Richard of B. Richard vouched to warranty one S., who came and said that he was not bound to warrant because this same Richard had disseised him of these same tenements; and he had therefor an assize of novel disseisin; and he tendered the patent for the same assize and asked judgment if he ought to warrant etc.

Russell. See here your deed by which you are bound to warrant us. Is this your deed or is it not?

Denham. I have no need to answer this, for I tell you that you disseised me. And if I were to warrant you now the disseisin would be thereby purged and our assize barred. Wherefore etc.

Russell. You ask what we have to bind you and we show you your own deed, on which you go out to imparl. Wherefore you ought to answer the deed.

Denham. I have no need to do that for I tell you, as before.

SCROPE J. You have asked what he had to bind you etc., and there you did a foolish thing; for before you asked etc. you should have said what you now say.

Denham. I had not at that time gone out [to imparl]; now I say that he disseised me and we have our etc. Judgment etc.

Note from the Record.

De Banco Rolls, Easter, 5 Edw. II. (No. 192), r. 135, Nottinghamshire.

Robert the son of Reynold of Hapelesthorne by his attorney claimeth against Oliver Fairweather of Littleborough two acres of meadow and the moiety of one acre of arable land, with the appurtenances, in Littleborough, by one writ; and, by another writ, four acres of land and a half acre, and one acre of meadow and a half acre, with the appurtenances, in Scretton¹ as his right and inheritance, into which the same Oliver hath no entry save by Robert, son of Ellis Hakun, who leased them to him and wrongfully disseised thereof Reynold of Hapelesthorne, father of the aforesaid Robert, whose heir Robert is, after the first etc.

¹ *Qu.* Screveton.

Note from the Record—continued.

Et Oliuerus per attornatum suum venit Et alias vocat inde ad Warrantizandum Robertum filium Elie Hakun qui modo venit per summonicionem Et petit sibi ostendi per quod debeat ei Warrantizare etc. Et Oliuerus profert hic duas cartas sub nomine eiusdem Roberti quarum vna testatur quod idem Robertus dedit concessit et confirmavit eidem Oliuero quasdam parcelas prati in predicta villa de Littleburghe. Et alia carta testatur quod idem Robertus dedit ipsi Oliuero quoddam pratum in predicta villa de Scrattone habendum et tenendum sibi et heredibus suis imperpetuum et obligauit se et heredes suos ad Warantizare etc. et ea ratione tenetur ei predicta tenementa Warantizare etc.

Et Robertus quo ad omnia tenementa in vtroque breui contenta exceptis duabus acris prati et dimidia ei Warantizat etc. Et defendit lus ipsius Roberti filii Reginaldi qui etc. Et bene defendit quod predictus Robertus filius Elie non disseisiuit predictum Reginaldum de predictis tenementis sicut idem Robertus filius Reginaldi per breue suum supponit. Et de hoc ponit se super patriam Et Robertus filius Reginaldi similiter. Et quo ad duas acras prati et dimidiam superius exceptas dicit quod ipse non tenetur ei pratum illud Warantizare etc. Dicit enim quod idem Oliuerus ipsum Robertum filium Elie de prato illo iniuste etc. disseisiuit per quod accio ei competit ad pratum illud recuperandum etc. Et dicit quod ipse nunc arramiauit quamdam assisam noue disseisine versus eum de prato predicto que quidem assisa inde inter eos adhuc pendet coram H. Spigurnel et sociis suis Iusticiariis etc. in Comitatu predicto prout paratus est verificare etc. vnde petit Iudicium etc.

Et Oliuerus dicit quod predictus Robertus filius Elie per hoc Warantiam predictam diffugere non potest quia dicit quod ipse non disseisiuit predictum Robertum de predicto prato sicut idem Robertus asserit Et de hoc ponit se super patriam. Et Robertus filius Elie similiter. Ideo preceptum est vicecomiti quod venire faciat hic a die sancti Michaelis in vnum mensem xij. etc. per quos etc. Et qui nec etc. Quia tam etc.

15. GEDDING *v.* ODE.¹I.²

Entre sur la nouele disseisine ou dit fut qe mesme cele qore porte le bref et son baroun autrefoiz porterent bref de nouele disseisine vers Maud etc. par qi cesti vers qi etc. ou troue fut qil ne furent vnqes seisi et demanda iugement si a cesti bref etc. ou fut dit qe de mesmes les tenementz ne passa vnqe lassise prest et alii econtra saunz graunter lassise qe fut alegge.

Iohane qe fut la femme R. de Estene porta son bref dentre deuers W. le fis M. etc. et dit en les queux etc. si noun par

¹ Reported by B, C, D, G, L, M, P, Q, and X. Names of the parties from the Record. ² Text of (I) from G.

Note from the Record—*continued*.

And Oliver doth come by his attorney ; and at other time he had vouched to warranty thereof Robert the son of Ellis Hakun who now cometh by summons ; and he asketh to be shown for what reason he is bound to warrant him etc. And Oliver doth make *profert* here of two charters in the name of the same Robert ; one of which doth witness that the same Robert did give, grant and confirm to the same Oliver certain parcels of meadow in the aforesaid vill of Littleborough ; and the other charter doth witness that the same Robert gave to the said Oliver a certain meadow in the aforesaid vill of Scretton to have and to hold to him and his heirs for ever ; and he bound himself and his heirs to warranty etc. ; and for this reason he is bound to warrant the aforesaid tenements to Oliver etc.

And Robert doth warrant to him all the tenements comprised in both the writs save two acres of meadow and a half acre. And he denieth the right of Robert the son of Reynold, who etc. ; and he denieth that the aforesaid Robert the son of Ellis disseised the aforesaid Reynold of the aforesaid tenements, as the same Robert, son of Reynold, doth by his writ allege. And of this he doth put himself upon the country ; and Robert the son of Reynold doth likewise. And in respect of the two acres of meadow and a half acre excepted as above he doth say that he is not bound to warrant that meadow to him etc., for he saith that the same Oliver did wrongfully disseise him, Robert, son of Ellis, of that meadow etc., whereby he hath right of action to recover that meadow etc. And he saith that he hath now arraigned a certain assize of novel disseisin against him in respect of the aforesaid meadow, the which assize between them thereof is now pending before H. Spigurnel and his fellows, Justices etc. in the county aforesaid, as he is ready to aver etc. ; and thereof he asketh judgment etc.

And Oliver saith that the aforesaid Robert, son of Ellis, cannot in this manner avoid the aforesaid warranty, for he saith that he himself did not disseise the aforesaid Robert of the aforesaid meadow, as the same Robert doth allege. And of this he doth put himself on the country. And Robert the son of Ellis doth likewise. So the Sheriff is commanded that he make to come here a month after the Day of St. Michael twelve etc., through whom etc., and who are neither etc., because both etc.

15. GEDDING *v.* ODE.

I.

Entry *sur disseisine*, where it was said that the present claimant and her husband had previously brought a writ of novel disseisin against one Maud, and that the assize had found that the claimants had never had seisin ; and judgment was asked of the present writ. It was replied on behalf of the claimants that they were not bound to answer a general allegation that an assize had passed, and they averred that no assize in respect of the same tenements had passed ; and the defendant joined issue thereon.

Joan that was wife of R. of Aston brought her writ of entry against W. the son of M. etc. and said that he had no entry into the tenements

Maud Corbet qe atort et saunt iugement disseisi la vaunt dite Ione etc.

Scrop. Ele ne put par cesti bref ren demander. Car autrefoye tel an deuaunt etc. porta mesme ceste I. et R. de Estene son baroun vne assise de nouele disseisine vers Maud Corbet. Lassise prise ou troue fut qe R. et Ione ne furent vnqe seisi etc. par qi agarde fut qil ne preisent ren etc. iugement si a cesti bref si ele ne mustre coment ele fut pus cel iugement seisi deyue estre resceu.

Hedoun. Nous voloms auerer qe Maud disseisi Ione.

Scrop. Nous alleggoms vne record ou vous mesmes futes partie seoms a vn de ceo.

Hedon. Il ne passa vnqe nule assise de mesme les tenementz prest etc.

Herle. Vostre respouns se stent a .ij. choses et issues car en tant come vous dites qil ne passa vnqe nule assise se chet en record. Et ceo qe vous dites de mesme les tenementz veet estre trie par pays par qi conusset le iugement et pus dites ne my de mesme les tenementz.

Hedon. De autrez tenementz qe ne sunt ore en demande nay ieo mestre a pleder dount depuis qe ieo dy de mesme les tenementz qe nous demandoms ore ne passa nul assise iugement si a autre serray ieo mys a respoudre.

Scrop. Si ieo meisse auant en barre vn reles et quiteclame et vous deiset qe les tenementz ne sunt pas compris en la quiteclame ne serreit la quiteclame graunte quasi diceret sic ausi de ceste parte desicom nous aleggoms qe vne assise passa encoutre Ione et Maud qest de record il bosigne qe vous le grauntet et pus pledet outre issint qe ceus de lassise qe sunt en vie pussunt estre en lenqueste.

Roubury. Certes ceo ne aueret pas. Car il dit qe de mesme les tenementz ne passa pas assise qei ad il donqe a fere dil assise.

Scrop. Si la court entent qe ly auoit autrefoit assise qe passa il nous suffit et qe les tenements qele demande sunt les tenementz dunt lassise passa pret etc.

Et alii econtra.

II.¹

I. de C. porta soun bref dentre vers C. de A. etc. et dit En les queux il nad entre si noun par Maud qe atort et sanz iugement disseisi Agnes seor mesme cesti Ion etc.

¹ Text of (II) from *C*, collated with *B*, *D*, *L*, *M*, *P*, and *Q*.

save by Maud Corbet that wrongfully and without judgment disseised the aforesaid Joan etc.

Scrope. She cannot claim aught by this writ, for before now, in such a year etc., this same Joan and R. of Aston, her husband, brought an assize of novel disseisin against Maud Corbet. The assize was taken and it was found that R. and Joan were never seised etc., and therefore judgment was given that they should take naught by their writ etc. Judgment whether she ought to be received to this writ unless she show she acquired seisin subsequently to that judgment.

Hedon. We will aver that Maud disseised Joan.

Scrope. We are alleging a record to which you yourselves were party. Let us first be at one touching that.

Hedon. No assize ever passed in respect of these same tenements. Ready etc.

Herle. Your answer extendeth to two matters and issues, for what you say as to no assize having ever passed is a matter of record, and what you say as to the tenements must be tried by a jury. Therefore admit the judgment, and then say that it was not in respect of the same tenements.

Hedon. I am not called upon to plead in respect of other tenements that are not now in demand. Since, then, I say that no assize hath passed in respect of the tenements which we are now claiming, [I ask] judgment whether I am called upon to answer in respect of any others.

Scrope. If I put forward a release and quitclaim in bar, and you say that the tenements are not included in the quitclaim, would not the quitclaim be admitted?—inferring that it would. So here, since we allege that an assize passed between Joan and Maud, which is a matter of record, you must admit it and then plead over, so that such of the assize as be still alive may be of the inquest.

ROUBERY J. You will certainly not have that; for he saith that no assize ever passed in respect of these same tenements. How, then, is he concerned with the assize?

Scrope. So long as the Court understandeth that an assize did pass aforetime, that is sufficient for us. That the tenements which Joan is claiming are the tenements in respect of which the assize passed, ready etc.

And the other side joined issue.

II.

J. of C. brought his writ of entry against C. of A. etc., and said that he had no entry into the tenements claimed save by Maud who wrongfully and without judgment disseised Agnes, sister of this same Joan.

Denom. ¹Iugement du bref qe la ou il dit qe nous entrames² par Maud qe dust auer disseisi Agnes seor etc. nous vous dioms qe mesme cesti Agnes et Richard soun primer Baroun porta vn assise de nouel disseisine vers mesme cely Maude etc. de mesme ceux tenemenz la quel passa en sa nature ou troue fut qele ne fut vnqes³seisi issi qe ele pout estre⁴ disseisi iugement etc.

Hedoun. ⁵Noun pas de mesmes les tenemenz prest etc.⁶

Denom. Il vous couent dire qil nauoit nul plee⁷ ou conustre le record et dire nent de mesmes les tenemenz⁸et ceo⁹serreit trie par pays etc.

Hedoun. ¹⁰Nous nauoms mye a pleder ore fors de mesmes les tenemenz et vous dioms nent de mesmes les tenemenz¹¹ prest etc.¹²

Denom. Qil nauoit nul plee ceo chet en record et ceo qe vous ditez noun pas de mesmes les tenemenz¹³ ceo chet en pays¹⁴et sic duplex par qi ceo nest point respouns.¹⁵

Hoc non obstante stetit verificacio.

III.¹⁶

Entre sur disseisine.

I. porta bref vers E. supposant son entre par Maud qe disseisa Agnes mere I.

Den. Agnes vostre mere porta assise de nouele disseisine de mesme ceus tenementz vers cel Maud ou troue fu qele ne la disseisa pas iugement si etc.

Hed. Assise ne passa vnqes entre els de ceus tenementz prest.

Den. Vostre respouns est double qar qant a ceo qe vous dites qe assise ne passa ceo chet en recorde et nent de mesme les tenementz chet en pais par qi il couent dire pleinement qil ni aueit pas tel recorde ou conustre le recorde et dire nent de mesme les tenementz.

Tamen lauerement qe *Hedoun* tendi estut.

Et alii econtra.

¹⁻² la ou vous dites qe nous deussoms auer entre, *D, L, M, P.* ³⁻⁴ *D, L, M, P* omit.

⁵⁻⁶ lassise ne passa vnqes de mesme ceus tenements etc. *D, L, M, P.*

⁷ *D, L, M, P* add simplement. ⁷⁻¹² en cointre le Record et dire neynt de mesme les tenementz prest etc. *Q.*

⁸⁻¹¹ *B* omits. ⁸⁻¹³ *L* omits.

⁹⁻¹⁴ ceo chet en pays et issint double respouns, *D, P.* ¹⁰⁻¹² nous vous dyoms qe nul plee de mesme les tenements prest etc. *M.*

¹⁴⁻¹⁵ issi double respouns, *M.*

¹⁶ Text of (III) from *X.*

Denham. Judgment of the writ, for whereas he saith that we entered by Maud who is supposed to have disseised Agnes, sister etc., we tell you that this same Agnes and Richard, her first husband, brought an assize of novel disseisin against this same Maud etc. in respect of these same tenements ; which assize passed in its nature, and it was found thereby that Agnes was never seised so as to be capable of being disseised. Judgment etc.

Hedon. Not in respect of the same tenements, ready etc.

Denham. You must either deny that there was any such plea or you must admit the record and say that it is not concerned with these same tenements ; and that is an issue which would be tried by a jury etc.

Hedon. We have no need to plead now except of these same tenements, and we tell you that no assize passed of these same tenements ; ready etc.

Denham. [If you say] that there was no plea, that is a matter of record ; and what you say as to the assize not having been in respect of these same tenements is a question for a jury. Your answer is therefore capable of two meanings, and therefore is not a definite answer.

Yet the averment stood notwithstanding this.

III.

Entry *sur disseisine*.

J. brought a writ against E., alleging that he had entered by Maud who disseised Agnes, mother of J.

Denham. Agnes, your mother, brought an assize of novel disseisin in respect of these same tenements against this Maud, whereby it was found that Maud did not disseise her. Judgment whether etc.

Hedon. No assize ever passed between them in respect of these tenements, ready.

Denham. Your answer is capable of two meanings ; for, if you mean to say that an assize did not pass, that is a matter of record ; while if you mean that an assize did pass but not in respect of the same tenements, that is a matter for a jury ; and therefore you ought either to say explicitly that there is no such record, or to admit the record and say that it is not in respect of the same tenements.

Nevertheless the averment which *Hedon* offered was allowed.

And the other side joined issue.

Note from the Record.

De Banco Rolls, Easter, 5 Edw. II. (No. 192), r. 177, Cambridgeshire.

Iohannes de Geddyng et Iohanna vxor eius per attornatum suum petunt versus Thomam Ode de Borewell vnum gardinum cum pertinenciis in Bodekesham in quod idem Thomas non habet ingressum nisi per Henricum Ode et Matildam vxorem eius qui inde iniuste et sine iudicio disseiseuerunt predictam Iohannam post primam etc.

Et Thomas per attornatum suum venit Et dicit quod non debet eis inde ad hoc breue respondere quia dicit quod predicta Iohanna simul cum Ricardo de Astone primo viro etc. alias apud Cantebrigiam coram Iohanne de Insula et Roberto de Retford Iusticiario [*sic*] ad assisas in Comitatu predicto assignatis arramiauit quandam assisam noue disseisine de gardino predicto versus predictam Matildam et quendam Willelmum de Sancto Iuone tunc virum suum per cuius assise veredictum conuictum fuit quod iidem Ricardus et Iohanna nunquam fuerunt in seisinâ de gardino illo vt de libero tenemento etc. Ita quod potuerunt inde disseisiri etc. per quod consideratum fuit ibidem quod predicti Willelmus et Matilda irent inde sine die et quod predicti Ricardus et Iohanna nichil caperent per assisam illam set quod essent in misericordia pro falso clamore etc. vnde ex quo predicta Matilda simul cum predicto Willelmo viro etc. per iudicium predictum retinuit versus predictam Iohannam tenementum predictum sicut predictum est petit iudicium si ad breue istud fundatum supra disseisina ipsius Matilde respondere debeat nisi de possessione posteriori doceri possit etc.

Et Iohannes et Iohanna dicunt quod per hoc breue suum cassari non debet etc. Dicunt enim quod predicti Ricardus et ipsa Iohanna nunquam aliquam assisam noue disseisine de predicto gardino nunc petito versus predictos Willelmum et Matildam arramiarunt sicut idem Thomas dicit. Et hoc petunt quod inquiratur per patriam. Et Thomas similiter. Ideo preceptum est vicecomiti quod venire faciat hic a die sancti Michaelis in .xv. dies etc. [xij etc.] per quos etc. Et qui nec etc. Quia tam etc.

Note from the Record.

De Banco Rolls, Easter, 5 Edw. II. (No. 192), r. 177, Cambridgeshire.

John of Gedding and Joan his wife, by their attorney, claim against Thomas Ode of Borewell a garden with the appurtenances in Bottisham into which the same Thomas hath not entry save through Harry Ode and Maud, his wife, who did unjustly and in default of judgment disseise thereof the aforesaid Joan after the first etc.

And Thomas cometh by his attorney and he saith that he ought not to answer them thereof on this writ, for he saith that the aforesaid Joan together with Richard of Aston her first husband etc. did at other time at Cambridge before John de Lisle and Robert of Retford, Justices assigned to take assizes in the county aforesaid, arraign a certain assize of novel disseisin of the aforesaid garden against the aforesaid Maud and a certain William of St. Ives, then her husband, by the verdict of which assize it was found that the same Richard and Joan were never in seisin of that garden as of a freehold etc. so that they could be disseised thereof etc. ; wherefore it was considered that the aforesaid William and Maud should go thence without day, and that the aforesaid Richard and Joan should take naught by that assize, but be in mercy for their false claim etc. Wherefore, seeing that the aforesaid Maud together with the aforesaid William, her husband etc., retained the aforesaid tenement against the aforesaid Joan by the aforesaid judgment as is aforesaid, the said Thomas asketh judgment whether he ought to answer to this writ that is founded upon the [alleged] disseisin by Maud unless a subsequent possession can be shown etc.

And John and Joan say that their writ should not be quashed for this reason etc., for they say that the aforesaid Richard and the said Joan never arraigned any assize of novel disseisin in respect of the aforesaid garden that is now claimed against the aforesaid William and Maud as the same Thomas doth allege. And they ask that this be inquired of by the country. And Thomas doth the like. So the Sheriff is commanded that he make to come here in the quindenes of St. Michael twelve etc., through whom etc., and who are neither etc., because both etc.

CONCORDANCE OF THIS EDITION WITH THE
OLD EDITION.

Page in the Old Edition.		Page in this Edition.	Page in the Old Edition.		Page in this Edition.
153	Un Johan de Ware porta son breve dentre vers un Adam	151	162	Attachement sur pro- hibicion	[reserved]
153	Un home enfeffa sa fille et son baron en forme taille. . . .	118	162	Un breve de Dower fuist porte	„
153	Un Robert porta son breve Dentre	102	162	En un <i>Quid iuris clamat</i> . .	„
154	Marmede de Twynge port un breve Dentrusion . .	72	162	Un breve de Formedon fuist porte	„
155	Le Roy port son <i>Quare impedit</i>	57	162	Un breve fuist porte vers une Feme	„
156	Johan de Huntynghfeld port son breve	50	163	Un breve de Dower fuist porte vers Gardeyn . .	166
157	Johan de Rose port son <i>ne vexes</i>	110	163	Un breve de Droit fuist porte. . . .	[reserved]
157	Un A. port son breve . .	18	163	Une Sibille la fille John de F. etc.	„
157	Labbe de Hertelond port son breve	155	163	Henry de Slomill port Son breve dentre. . .	„
159	Un Johan de D. port son breve.	222	164	Un breve Dentre	181
159	Robert Abbe de la Bataille port son <i>Quare vi et armis</i> . .	[reserved]	164	Nota un John et Alice port lour <i>replegiare</i> [reserved]	
160	Robertus filius Rogeri de Lancaster summonitus fuit	„	164	Nota un home port son breve de droit . . .	38
160	Un A. port son breve dentre vers B. et A. sa feme	„	165	Une Maud port son <i>cui in vita</i>	187
160	Un breve fuist porte vers un A.	„	165	Une Alice avowa la prise bon	[reserved]
161	Un home voucha a garrantie	„	165	Un Johan et A. sa feme etc.	27
161	Le Priour de Bridlington se plaint	177	167	Cecille qe fuist la Feme Nicholas de C. . .	[reserved]
161	Une Feme port son breve	[reserved]	167	Johan le Couper se plaint qe Isabel	92
			168	Bref de Ravisement de Garde	[reserved]
			¹ 169	Une Feme port son breve de Dower	38

¹ The Old Edition assigns this case to the Trinity term of the fifth year.

CONCORDANCE OF THIS EDITION WITH FITZHERBERT'S
ABRIDGEMENT.

Fitzherbert's Abridgement.	Page in this Volume.	Fitzherbert's Abridgement.	Page in this Volume.
Avowre, 206	83	Mesne, 64	155
Avowre, 207	6	Resceit, 147	159
Entre, 66	103	Resceit, 161	159
Essone, 80	149	Voucher, 252	118
Estoppel, 258	84	Voucher, 255	166
Estoppel, ^r 259	107		

TABLE OF STATUTES.

	PAGE
Statute of Marlborough (52 Henry III.), cap. iv.	145
„ „ „ cap. xv. (illegal distress) 83, 84, 119	119
Statute of Westminster I. (4 Edward I.), cap. xlvii. (age) . . .	107, 108
Statutum de Viris Religiosis (7 Edward I.), (appropriation into mort- main)	1, 2
Statute of Gloucester (6 Edward I.), cap. viii. (<i>essoïn de seruiciis Regis</i>)	147
Statute of Merchants (13 Edward I.)	46
Statute of Westminster II. (13 Edward I.), cap. i. (<i>de donis condicio- nalibus</i>)	121, 177
„ „ „ cap. ii. (removal of writ of replevin into Common Bench)	97
„ „ „ cap. iii. (reception of heir to defend his right) 103, 160, 210, 211	211
„ „ „ cap. iv. (remedy for tenants for life etc. in danger of losing their land by default)	21, 22, 26
„ „ „ cap. v. (damages in <i>darrein presentement</i>)	214
„ „ „ cap. xviii. (elegit)	214
„ „ „ cap. xxxii. (appropriation into mortmain)	1, 2
„ „ „ cap. xlvi. (view)	77
Statutum de defensione iuris (20 Edward I.), (reception to defend right) .	160
Statutum de Finibus (27 Edward I.), cap. i. (exceptions to fines) . .	15
Articuli super cartas (28 Edward I.), cap. x. (conspiracy)	42
Ordinatio de conspiratoribus (33 Edward I.), (definition of ‘con- spirators’)	42, 116
Statutum de coniunctim feoffatis (34 Edward I.), (joint tenants) . .	92
Statutum de Conspiratoribus (of uncertain date)	42, 116
Statutum de districtione Scaccarii (of uncertain date), (distress of beasts of the plough)	18
Statutum de visu terrae (of uncertain date), (view)	37, 77

TABLE OF THE FORMS OF ACTION.

(This table relates to the reported cases only. The references to the forms of action which are mentioned incidentally in the reports will be found in the Index of Matters.)

Account, 153, 154	Intrusion, 72
Ael, 14	Mesne, 155
Conspiracy, 42, 114	Monstraverunt, 125
Cosinage, 118	Ne vexes, 108
Covenant, 216	Novel Disseisin, 219
Darrein Presentement, 212	Nuisance, 100
Debt, 140	Per que seruicia, 162
Deceit, 148	Quare impedit, 1, 27, 57, 130, 192
Detinue of Charter, 148	Quare vi et armis, 150, 215
Dower, 20, 38, 120, 123, 124, 166	Replevin, 2, 6, 18, 81, 84, 96, 177
Ejectment from Wardship, 49	Right of Advowson, 37
Entry (<i>cui in vita</i>), 186, 191	Scire facias, 204
Entry (<i>sur disseisine</i>), 102, 107, 151, 181, 209, 221	Trespass on Statute of Marlborough, 83, 119, 143
Entry (undefined), 152, 159, 165, 220	Utrum, 70
Formedon, 174, 176	

TABLE OF CASES.

HILARY TERM, 5 EDWARD II.

1. *Eure v. The Abbot of Our Lady of York* 1

A man brought a *quare impedit* against an Abbot, but, not appearing, was nonsuited. The Court ordered that the Abbot should have a writ to the Archbishop requiring him to admit the Abbot's presentee, but this was to stand over until inquiry had been made as to the legality of the appropriation of the church into mortmain. It was pointed out, on behalf of the Abbot, that the statute required such inquiry only in the case of an Abbot or Prior bringing the writ, and here the writ was brought against the Abbot. It was said further that, apart from this, no formal inquiry was necessary, as the Abbot produced grants and confirmations of the advowson by successive Kings of England from Henry I. downwards. The Court agreed, and ordered the writ to the Archbishop to issue without delay. The Abbot was also awarded damages in the amount of a moiety of the annual value of the church.

2. *Bixley v. Bavent* 4

A man brought a writ of replevin in respect of the seizure of four swans, of two of which, he said, he had had deliverance. The defendant said that he had seized only three swans, and that the plaintiff had had deliverance of all of them; and he avowed because the place where the swans were seized

was his several fishery, and because the swans were committing damage therein. The plaintiff said that the defendant could not avow for such reason, for the place where the swans were seized was his, the plaintiff's, common, wherein he and his predecessors from time immemorial had had a right to common their swans. The defendant averred that the place was his own several fishery; and upon this issue was joined.

3. *Mercer v. Launde* 6

A man counted in a writ of replevin that two others wrongfully seized his cattle, though only one of these two was named in the writ; but the Court would not therefor abate the writ. The defendant named in the writ avowed for services due to him as the heir of a certain Isoud through her father. The plaintiff said that the tenements charged with the services were the inheritance of Isoud as her mother's heir, and that these tenements must descend in the blood of Isoud's mother and not in the blood of her father, and the Court was asked to say that the defendant could not avow as Isoud's heir. There is no record of any judgment.

4. *Esebathe v. Esebathe* 14

A woman, by a writ of *ael*, claimed a manor and an advowson, relying upon the seisin of her grandfather. It was said on behalf of the defendant that

the grandfather did not die seised of one third of the manor, and that he had granted, by a fine, the other two thirds and the advowson to the defendant and had bound himself and his heirs to warranty; and the Court was asked to rule that the plaintiff had no right of action. The plaintiff said that she was under age and, consequently, could not answer any fine; and the fine, she said, did not show that her grandfather did not die seised. Her writ was a possessory writ, and she sufficiently supported it if she averred that her grandfather had died seised and that she was her grandfather's heir, and she asked the Court to rule that the defendant must answer her writ. Judgment was reserved.

5. *Potton v. Brun and Bailiff* . . . 18

A man brought his writ of replevin and complained that the defendant had wrongfully taken the beasts of his plough, to wit, four bullocks. The defendant said that he had not taken four bullocks, but four cows. And issue was joined on this.

6. *Beuveysin v. Portebref* . . . 20

In a writ of dower the defendant said that the husband was never so seised after his marriage that he could dower his wife. And issue was joined on this. It appeared that the father of the husband had bailed certain manors to the husband during his own absence in foreign parts, reserving to himself full right to resume them at his pleasure. Afterwards, while the husband was still in seisin, his father gave him a charter in which he said that he had given and granted the manors to his son in fee tail, with reversion to himself and his heirs in case of his son leaving no issue; and a certain rent service was reserved. The Court asked the jury to say whether the plaintiff was married to her husband at the time when the lands were bailed to him, and whether the charter was made during the marriage. And they

said that she was married to her husband both at the time of the bailment and at the time of the giving of the charter. Judgment was reserved; and thereupon one W., son of the defendant, intervened and prayed leave to defend his right. He said that the tenements in question were of his own right, and that his father had only a freehold in them jointly with himself. The plaintiff objected to his being received in delay of her seisin; and said that W. did not come within the terms of the statute, which provided only for cases where the defendant had deliberately lost by default or had made a sham defence; and she asked that judgment should straightway be given on the findings of the jury. Judgment was reserved.

7. *Champion v. Havering, Leek and Stretton* . . . 27

A woman and her husband brought a writ of *quare impedit* and said that the right to present a clerk to a certain vacancy in a certain vicarage belonged to them in right of the dower assigned to the wife by the son of her former husband; by which assignment she was entitled to present at every third vacancy. The son, she said, had presented twice consecutively; and this was the third vacancy. The defendant, the Archbishop of Dublin, said that the vicarage was annexed to the Deanery of Penkridge, and that he was Dean of Penkridge in right of his Archbishopric and by collation by the King; and he asked aid of the King. The plaintiffs said that the Archbishop could not shelter himself behind the King, but ought to answer them on the facts they had stated, which they had offered to aver in any form the Court directed. The Archbishop had made no reply to such offer to aver, and so was, they argued, impeding them of his own tort. Afterwards the defendant said that the last vicar was not appointed by the son of the wife's first husband but by a predecessor of the defendant in

the Archbishopric in right of his Archbishopric. Issue was joined upon this by the plaintiffs, and the jury found in their favour on the facts. They also recovered damages in the amount of two years' value of the vicarage.

8. The Prior of Coventry v. Wald . . . 37

In a writ of right of the advowson of a church a view was granted because there were three villis in the county having the same name as the vill where the church was.

9. Thornsett v. Whaite . . . 38

A woman brought a writ of dower and claimed certain tenements. It was said, on behalf of the defendant, that she ought not to have dower, because her alleged husband never married her. The averment was framed in this form with a view of retaining the action in the lay court. The important fact seems to have been that the man and woman had been betrothed to each other but not formally married; and it was pointed out that, as the Canon Law looked upon marriage and betrothal as all one, the result of the wife being allowed to aver in the usual form 'joined in loyal matrimony,' instead of the defendant's averment being received, would be that the issue would have to go to the Ecclesiastical Court for decision, and that Court would find that betrothal was all one with marriage; and so the claimant, though she were, in fact, never married, would get her dower, which would be unfair to the defendant. The Court ruled, however, that questions of this sort had always been sent to the Ecclesiastical Court for decision, and that such an ancient practice must be continued. The Spiritual Court found that the woman was 'joined in loyal matrimony,' and the lay court thereupon awarded her dower.

10. Goldington v. Bassingbourne . . . 42

J. B. and five others forged a statute merchant purporting that Ralph G.

had bound himself to his brother Richard in two thousand pounds. In virtue of this forged deed they sued out, without Richard's knowledge, a writ of execution to seize the lands that were in Ralph's possession on the day that the statute purported to be made. Between this day and the date of the writ of execution Ralph had sold a parcel of his land to W. G. J. B. and his fellow-conspirators took action, in Richard's name, but without his knowledge, against W. G. and obtained recovery of the land. They then forged another deed by which Richard purported to grant the land to J. B. When the true facts were discovered W. G. took action in the King's Bench and proved that the deeds were forged. He then brought his writ of conspiracy in Common Bench against J. B. and the other conspirators, and laid his damages at a thousand pounds. J. B. came into court by attachment, and various objections were taken on his behalf to the writ; and then he went out to imparl. On the following day he failed to appear, and the plaintiff asked judgment. The Court desired to advise itself, but, before judgment was given, the parties came to a settlement on the terms that J. B. should pay two hundred pounds at once, without making necessary the issuing of a petty *cape*. From various entries in the Roll it would appear that J. B.'s fellow-conspirators were never got into Court.

11. Amundeville v. The Countess of Cornwall and others . . . 49

A man brought a writ of ejectment from wardship and said that R. held a manor of him by knight service, and died, leaving an infant son, and that he, the plaintiff, thereupon assumed, as was his right, the wardship of the manor and of the infant son of R. In this wardship he continued until he was ejected therefrom by the defendant with force and arms; and he asked for damages. The defendant

said that R. held the manor of her deceased husband, and not of the plaintiff, and that, upon the death of her husband, R.'s services were assigned to her by way of dower; and that therefore she seized the wardship after R.'s death. In his replication the defendant said that by a fine levied in 18 Edward I between his mother, whose heir he was, and R. the manor was recognised as being the right of R. by the gift of the plaintiff's mother; R. rendering to the chief lords all services appurtenant to the manor on behalf of the heirs of the plaintiff's mother. The plaintiff contended that this proved that R. held the manor from him, while he himself held it more directly from the defendant. The defendant said that, all fines notwithstanding, R. held the manor from her late husband, and that this manor was afterwards assigned to herself by way of dower; and the plaintiff joined issue.

12. The King v. The Archbishop of York 57

The King brought a writ of *quare impedit* against the Archbishop and claimed that he had the right to present to the vacancy in the vicarage of Norton. The vicarage of Norton was in the gift of the Bishop of Durham in right of his office. The see, however, was vacant through the death of Bishop Anthony of Bec. The King, *sede vacante*, was guardian of the temporalities of the diocese; the Archbishop, as metropolitan, was guardian of the spiritualities. The question for the Court's decision was whether a vicarage was a temporality or a spirituality. After long arguments the Court held that it was a temporality, and the King thereupon recovered the presentation.

13. Marston v. Walraund 70

A parson brought a jury of *utrum* against a man and his wife. The defendants vouched themselves to warranty, as the land in demand was in

possession of the wife as her father's heir. After much delay the actual issue was tried in Devonshire, and it was found by the jury that the land in demand was in fact the free alms of the plaintiff's church, but that he himself was in seisin of a moiety of it.

14. Thwing v. Beaucol 72

A man brought a writ of intrusion and claimed certain lands into which, he said, the defendant had no entry save by the intrusion which he made therein after the death of his father, who held the land for the term of his life by the lease of the plaintiff. The defendant replied that he had not entered by intrusion but by a judgment gotten by him in an assize of mortdancestor brought by him against his father's widow; and he offered to aver this by the record. To this the plaintiff replied that the defendant might first have entered by intrusion and then have been disseised and then subsequently have recovered by judgment, in which case the judgment would be no answer to the plaintiff and ought not to bar him from averring that the defendant entered by intrusion; and he asked judgment of the writ. After further arguments on points of pleading the Court reserved judgment. No judgment is recorded, but one of the reports states that the writ was quashed, apparently on the ground that it was in the *per*, whereas it ought to have been in the *post*.

15. Glover v. The Abbot of Shrewsbury 81

A man brought his writ of replevin against the Abbot and complained of the wrongful seizure of three oxen. The Abbot avowed for *damage feasant* in his several. The plaintiff's replication was that the place where the seizure was made was not the Abbot's several but the common of the burgesses of Shrewsbury, of whom he was one. For the Abbot it was said that no burgess of Shrewsbury ever had common therein except by payment or on sufferance.

The plaintiff offered to aver that the burgesses had had seisin of the place as a common from time immemorial without any interference by the Abbot, whose tenants they were. And issue was joined upon this.

16. The Prior of Lewes v. Butler . . . 83

The Prior complained that the defendant had wrongfully taken two of his oxen and driven them into another county, contrary to the provisions of the Statute of Marlborough. The defendant said that the Prior had already issued a writ of replevin in respect of the same facts, and that if he were received to the present writ under the statute he might recover damages twice for the same trespass. The Prior said that the two writs were in respect of two different seizures. The defendant joined issue upon this. Neither of the reports states what the finding, if any, of a jury was; but the second report says that the Justices were of opinion that the plaintiff might elect whether he would proceed by way of a writ founded on the Statute of Marlborough or by a writ of replevin; and that if he took action by way of one of these his right to the other would be extinguished.

17. Cooper v. Delegold . . . 84

A man brought two writs of replevin against a woman, the one complaining of the wrongful seizure and detention of a horse, the other of the wrongful seizure and detention of a mare. The defendant avowed for rent service in arrear on lands held of her by the plaintiff. The plaintiff said that he held only half the land for the services of which the defendant avowed, and that he held that half only in right of his wife, of whom he prayed aid. Aid was allowed him; and he and his wife said that the original lessor of the land, through whom the defendant alleged seisin of the service, was never so seised of the land that he could charge it with a yearly rent. The defendant

joined issue on this, and a jury was ordered.

18. Drinkstone v. The Prioress of Markyate and Langelsume . . . 96

A man brought his writ against the Prioress and complained that she had wrongfully distrained in her fee for customs and services. The defendant avowed for a rent-charge in arrear. The plaintiff asked judgment of this avowry, as being no answer to the writ. The objection was overruled. The plaintiff then said that he held the land where the seizure was made only in right of his wife, and he asked aid of her. This was allowed. The plaintiff and his wife then said that certain lands, of which the place where the seizure was made was parcel, were the inheritance of the wife and her sister; and they asked aid of the sister and her husband. This was allowed. The sister and her husband did not come, and the plaintiff and his wife were ordered to reply to the defendant's allegations. They said that the alleged lessor of the lands was not in seisin of the land in question at the time when he was said to have charged it with the rent-service. The defendant joined issue on this, and a jury was ordered.

19. Huse v. Cogan . . . 100

A parson brought his writ of nuisance against a man and said that he wrongfully disturbed him in having fairs twice a year as his predecessors had had them. The defendant said that, though the writ charged him with hindering the plaintiff from having his fairs, the plaintiff in his counting had alleged no specific act whereby the defendant had hindered him, and he asked judgment whether he need answer the writ. Judgment was reserved.

20. Mason v. King . . . 102

R. brought his writ of entry founded upon novel disseisin against M., alleging that she had no entry save by E., who

wrongfully disseised R.'s father. M. made default, and thereupon R. claimed seisin of the land. One G. then intervened and said that M. held this land of his inheritance by way of dower, and he prayed to be received. It was objected by the plaintiff that if G., being outside the degrees, were received, his writ would be abated. After arguments, G. was received, but was told that he would not be allowed to plead in abatement of the writ. G. then denied that E. had disseised the plaintiff's father. Issue was joined, and a jury was ordered.

21. Note 106

A tenant vouched to warranty, and essoined himself *de malo veniendi*. The warrantor made default, and the Court gave judgment that the claimant should recover against the tenant, and the tenant against the warrantor.

22. Anon. 107

An infant brought his writ of entry based on disseisin done to his father, who had brought a writ of novel disseisin but had died while the assize was pending. The defendant objected that the plaintiff ought not to be received during his infancy. The objection was allowed, as the plaintiff did not come within the provisions of the Statute of Westminster II. cap. xlvii.

23. Roys v. The Abbot of St. Benet of Holme 108

A man brought his writ of *ne vexes* against the Abbot. The Abbot replied that the plaintiff was his villein and not entitled to be answered. The plaintiff said that the Abbot, by casting an essoin against him, had recognised him as a free man. The objection was not allowed. The plaintiff then said that a predecessor of the Abbot had enfeoffed his great-great-grandfather of fifteen acres of land, and that as he and his father and grandfather and great-grandfather had been of free estate the Abbot could not say that he was his

villein. The Abbot joined issue upon this, and a jury was ordered.

24. Goscelyn v. Kempe and others . . 114

A man brought a writ of conspiracy against eight others and complained that they had maliciously procured him to be indicted of various larcenies and felonies, by reason of which indictment he was arrested and imprisoned until he was acquitted at the Gaol Delivery. It was said on behalf of the defendants that two of them were of 'the four men and the reeve' who were summoned to the Sheriff's Turn, and, as such, did lawfully make their presentment by reason of common report, and that four of the others were of the jurors by whom the plaintiff was indicted at the Sheriff's Turn; and judgment was asked whether in these circumstances the plaintiff could have any action for conspiracy against them. It seems to have been argued that if the writ failed against these it must also fail against the other two defendants who were jointly sued. The plaintiff traversed the allegations of the defendants and put himself upon a jury, as did the defendants. A jury was ordered.

25. Anon. 118

A writ of cosinage is brought against a man and his wife. They vouch themselves to warranty, and the voucher is allowed.

26. Strode v. Ergleys and others . . 119

A man brought his writ on the Statute of Marlborough against several others and complained that they had wrongfully seized his horse in the King's highway in Bristol. All the defendants except one entered a plea of not guilty, and the remaining defendant said that he was the King's bailiff in Bristol, and that, because the plaintiff refused to find pledges to answer a charge of trespass brought against him, he had it in mind to attach him by the horse; and the plaintiff ran off on to the King's highway, taking the horse with him;

and it was in these circumstances that the horse was taken, and not against the peace. The plaintiff said that the horse was taken maliciously, and not as the defendant alleged. And he put himself on a jury, as did the defendant. A jury was ordered.

27. *Anon. v. Robert of Clare* . . . 120

A woman brought a writ of dower. It was replied that the land out of which she claimed dower was settled upon the husband and his first wife and the heirs of their two bodies, so that the husband never had more than a fee tail. The woman admitted this. The Court ruled that she should take naught by her writ.

28. *Anon. v. Lestrangle* . . . 123

A woman brought a writ of dower against the guardian of the lands and of the heir of her husband and claimed a third part of a manor. The defendant said that he claimed a freehold in a third part of the manor, and that the writ was brought against him as guardian. As to the rest of the claim, he replied that the writ must be abated as a whole, and not in parcels. But the Court would not allow this. The defendant then said that the woman's husband held the whole manor of him and out of his seisin enfeoffed one J. to hold of the chief lord of the fee. J. was a bastard, and on his death the defendant, being chief lord, entered as upon his escheat. The plaintiff averred that her husband died seised of the whole manor, and that the defendant entered only as guardian. Issue was joined upon this.

29. *Anon.* . . . 123

A woman brought a writ of dower and claimed, *inter alia*, the third part of a right to common of pasture, which she said was of the freehold of her husband. It was said in reply that a right to common could not form part of the demesne of her husband. The Court said that she might have other writ.

30. *Curru v. Curru* . . . 124

A woman brought her writ of dower. The defendant said that upon the death of the plaintiff's husband a certain charter of his inheritance came into her hands, and that if she would surrender it he was willing to render her her dower. The plaintiff denied that any such deed came into her hands after the death of her husband, as asserted by the defendant; and she put herself on a jury, as did also the defendant. A jury was ordered.

31. *Attewych and others v. The Abbot of Bec-Herlowyn* . . . 125

Four men of the manor of Oakbourne brought a writ of *monstraverunt* against the Abbot, who said that they ought not to be answered, because they were his villeins. The plaintiffs said that the Abbot could not make such reply because they were men of the manor of Oakbourne Regis, which was ancient demesne. The Abbot said that the plaintiffs could not say that, because previously, in a similar writ, they had said, as they said now, that they were of the manor of Oakbourne Regis, and it was then found by inquest that they were not of the manor of Oakbourne Regis, but of the manor of Oakbourne Miles, which was not ancient demesne. The plaintiffs said that the Abbot's answer was twofold, that they were his villeins and that they were not men of ancient demesne, and that he must betake himself to the one exception or the other. The Abbot betook himself to the exception of villeinage. The plaintiffs then ask judgment on the point whether the Abbot can now say that they are his villeins, seeing that in the previous action he had put himself on the inquest and had made himself party to them as free men, taking up to then no exception of villeinage. Judgment was reserved.

32. *Curtenay v. The King* . . . 130

One H. C. recovered the presentation to a church from T. H.; but the Bishop

refused to admit his presentee because the King had commenced action against the same T. H. for the recovery of the same advowson. H. C. thereupon prayed the King that the right to the advowson might be determined between them. The King sent the issue for trial into the King's Bench, and directed the Chief Justice of the Common Bench to send the record of the process in the action of the *King v. T. H.*, so far as it had gone, into the King's Bench. H. C. claimed the advowson as the heir of I. F. The King at first claimed as purchaser from I. F., but he subsequently said that I. F. was his tenant in chief, and that upon her death the advowson came into his hand by way of escheat and had not been sued out by the heir. The Court agreed, and gave judgment for the King.

33. Ford v. Burnel 140

By an agreement made in writing between the plaintiff and the defendant the latter was to enfeof the former, in consideration of services to be rendered, of land of a stated value within six years. If he failed to do so then he was liable within the same six years to a certain penalty. It was said that no cause of action arose until the expiration of the six years and the defendant's liability ceased at the end of the same six years, and that, consequently, the action was not maintainable. Judgment was reserved.

34. The Abbot of Bayham v. Hydenye and others 143

The Abbot brought a writ of trespass against several, and complained that they had wrongfully seized his cattle and driven them out of the body of the county into the franchise of the Cinque Ports. The defendants pleaded their franchise and said that they ought not to be impleaded elsewhere than at the Court of Shepway; and they said that the place where the cattle were seized was within the franchise. The Abbot said that it was not within the franchise

of the Cinque Ports, but within the body of the county. And issue was joined upon this. Great delay in taking the inquest ensued 'although the jurors by whom an inquisition of this kind ought to be held had frequently offered themselves,' and the King, upon the Abbot's complaint as to the delay, ordered that the inquest should be taken 'with all the celerity consistent with the law and custom of his realm.' But word was afterwards sent to the Justices that, notwithstanding the King's message to them, the inquest was to be adjourned. Several further adjournments are recorded, and there is no evidence that the inquest was ever taken.

35. Anon. 148

A man brought his writ of detinue of charter and said that he had bailed a charter to the defendant in the presence of witnesses. The defendant desired to wage his law that he had received no charter from the plaintiff. But he was made to aver that he had not received it; and issue was joined upon this.

36. Anon. 148

The plaintiff in this action by writ of deceit had previously brought a writ of right in the Common Bench, which on the application of the Bishop of Norwich's bailiff was remitted to the franchise court of the Bishop, and a day given to the parties. Upon this day the defendant had himself essoined by reason of his inability to travel, and was adjourned to a date three weeks later, on which day a protection from the King was tendered in his behalf, excusing him from attendance at all manner of pleas because he had to go to Scotland on the King's service. On that same day the plaintiff alleged that the defendant was at Boston and that he then went to his home at Lynn, where he remained for a fortnight. The plaintiff brought his action against him for deceit, and claimed damages for delay of his right. The defendant said that he was in fact

in Scotland on the day in question, and proffered a letter to the Court in proof. The Court would not accept this letter as evidence, and asked the defendant if he were in Lynn at the time the plaintiff alleged that he was there. The defendant said that he was not; and issue was joined.

37. The Earl of Arundel v. Haket and others 150

The plaintiff brought his writ of *quare vi et armis* against the defendants, and complained that they came into his free chase at Bicknor and there did seize a deer and did beat and injure his hounds. The defendants averred that Bicknor was not the free chase of the plaintiff, and upon this averment issue was joined.

38. Ware v. Anon. 151

A man brought his writ of entry and said that the defendant had no entry save by R. and C., his wife, who had disseised him. The defendant vouched R. and C. to warranty, and they said that the plaintiff ought not to be received to this writ because he had previously brought an assize of novel disseisin against them, in answer to which they had pleaded that he had before then brought a writ of entry against them in which he had alleged facts that were inconsistent with his allegations in the assize, and that as he could not deny that, judgment was given that he should take naught by the assize; and they asked judgment whether he ought to be received to this present writ unless he could show a later seisin, which in the proceedings under the assize he had admitted that he could not show. After some further argument the warrantors were told by the Court that they were within an ace of putting in no defence at all; and they then averred that they had not disseised the plaintiff.

39. Grunsard v. Rous 152

The name given by the Bishop in Confirmation supersedes the name given

in Baptism, and becomes thenceforward the person's right name.

40. Anon. 153

A man brought his writ of account in respect of two terms during which he said that the defendant had been his bailiff. The defendant denied that he had been the plaintiff's bailiff during the first term, and as to the second term he said that the plaintiff had appointed him his bailiff without any liability to render an account; and he tendered a deed in proof. The plaintiff said that the deed was made before the appointment to the second term. As the plaintiff had counted of this deed judgment was given that he should take naught by his writ in respect of the first term. The defendant then pleaded that the counting was all one whole, and since the counting and writ had been abated in part, they must be abated as a whole. The Court overruled this, and the defendant then averred that he had not been the plaintiff's bailiff.

41. Cokelyn and Russell v. Wodhull . 154

A man brought his writ of account and said that the defendant was his bailiff until a certain date; but, as it appeared that the writ was purchased before that date, it was abated.

42. The Abbot of Holland v. Ranuel . 155

One V. gave tenements to the Abbey in pure alms. At V.'s death her son enfeofed the defendant of the manor wherein the tenements lay, and the defendant granted and confirmed them to the Abbey, and bound himself and his heirs to acquit the Abbot against all folk. One M. distrained the plaintiff for homage and escuage, and the plaintiff called upon the defendant to acquit him. The defendant said that the plaintiff did not hold of him; that only a lord could acquit of escuage and homage; and that the Abbot still held of V. and her heirs, because a lordship was not purchasable. But the defendant could not deny that by

his deed he had bound himself and his heirs to acquit the Abbot, and so judgment was given that he should acquit the Abbot and his successors for ever of the services in question.

43. Anon. 159

A writ was brought against a tenant in tail who made default. The heir-apparent under the entail intervened and prayed to be received to defend his right. He was received.

44. Dela Haye v. Gynes and Bayse . 162

A man brought his writ of *per que serviciu* against a tenant and said that the tenant held of the plaintiff's conusor on the day the conusance was made. The defendant offered to aver that the conusor had granted to his ancestor the tenements in question before the

conusance was made. It was ruled that he could not make such averment in the absence of the conusor, and the Sheriff was ordered to have the conusor in Court on a future day.

45. Anon. 165

It was argued that where land had been seized and replevied the tenant was not, in a writ of entry, entitled to view. But the Court would not accept this.

46. Anon. 166

A writ of dower was brought against a guardian *de facto*. He asked leave to vouch the guardian *de iure*; but leave was refused because, while the plaintiff was claiming a freehold, he had naught but chattels; and, besides, when a guardian demises the wardship he demises with it the charge of dower.

EASTER TERM, 5 EDWARD II.

1. Pomeray v. Raleye 174

In a writ of formedon in the descender the right was laid as descending from the grandfather to the grandson, while the plaintiff counted that it descended from the grandfather to his son, and from his son to his grandson. The defendant asked that the writ should be abated on the ground of this variance. It was said, however, that the form of writ provided by the Chancery did not allow of the descent of the right being laid in anyone who had not actually had seisin, and in this case the grandfather's son had died before acquiring seisin; but in counting it was necessary to trace the descent from father to son. The writ was consequently maintained.

2. Belyng v. Anon. 176

It was said that the Statute *de donis condicionalibus* restrained only the original feoffee from alienating; but this contention was not allowed by the Court, on the ground that through the carelessness of the draftsman the words of the statute fell short of what was meant to be its intention.

3. The Prior of Bridlington v. Grimston and others. 177

It was objected on behalf of the plaintiff that the defendant in a writ of replevin avowed for homage without saying that he was seised of homage. To this objection the defendant replied that he had said that he was seised of escuage, and escuage attracted homage. The Court, allowing this, overruled the plaintiff's exception.

4. Colewell v. Park 181

A writ of entry *sur disseisine* was brought against a man and his wife, who, it was said, entered through one S. who had disseised the claimant's father. The defendants replied that S. recovered the land by a writ of escheat in the Eyre of Exeter, and so entered by judgment and not by disseisin. The claimant denied that any land which S. might have recovered by the writ of escheat was the same land now in demand. The Court thereupon ordered a transcript of the record in the Roll of the Eyre to be made and sent to them. The transcript was received, and then the claimant failed to appear; and judgment was given against him.

5. *Hayward v. Carru* 186

A woman gave a man a charter of enfeoffment and subsequently married this same man. She never gave him seisin of the tenements. The husband alienated, and upon his death the wife brought her writ of entry *cui in vita* against the tenant; and she recovered the tenements on the ground that until her husband alienated them the seisin had always continued in herself.

6. *Anon.* 191

A woman brought her *cui in vita* and claimed the land in demand as her right by the gift of one who had enfeoffed her and her husband of it. The defendant attempted to abate the writ on the ground that the husband never took anything under the gift as alleged by the writ. He was not allowed to do this, but was told that he might aver that neither the husband nor the wife ever had anything by the gift alleged. And he averred this.

7. *Manby v. Hay and Bedwyn* 192

A man brought his *quare impedit* and claimed the right of presentation to the church of T. The defendant said that there was no church at T., but only a chapel-of-ease to the church of A., of which he was patron; and that he, therefore, had the right to present to the chapel-of-ease. The plaintiff averred that the church at T. was a parish church and not a chapel; and the defendant joined issue. The jury found that the church of T. was not a church, but a chapel annexed to the church of A. The plaintiff, therefore, took nothing by his writ.

8. *Croft v. Ossington* 204

A man brought his writ of *scire facias*, and claimed execution of a fine by which certain land was granted by one T. to the father of the plaintiff and to the heirs of his body. The fine was not denied, but the respondent said that T. had only a life estate in the land granted by her father, and that, as her father's heir, she had entered upon the

land on the death of T.; and she said further that she was not named in the fine, and that a fine levied in respect of the right of persons not named therein was null and void; and she said that at the time of the levying of the fine she was under age and was *coverte* with a husband. The Court came to the conclusion that it could not look further than the fine, which was not denied and was still in force, and gave judgment for the claimant, leaving the respondent to her writ of entry *ad terminum qui preterit*, and noting that in defending himself under that writ the present claimant would have his voucher to warranty, and consequent recovery to the value of the land, if he lost; an advantage of which the law would not deprive him.

9. *Plumberewe and Foghtlestone v. Montfort* 209

A tenant for life made default. The reversioner prayed to be received to defend her right. She was received. She then said that she could not defend her right without her co-reversioner, and she prayed to have aid of her. It was objected that reception to defend was granted by the statute (Westminster II. cap. iii) only to one who was immediately ready to defend her right; and that, consequently, it was not now open to the intervenor to say that she could not defend her right without her co-reversioner. The Court granted aid.

10. *Loccumbe v. Loccumbe* 212

A man had the advowsons of two churches. Upon his death his son assigned dower to the widow. The widow said that by the terms of this assignment she was to have the right of presentation to every third vacancy, irrespective of the church where the vacancy occurred. The son said that she was entitled only to present to the third vacancy in each of the two churches; and he brought his writ of *darrein presentement*. The widow pleaded the terms of the assignment as alleged by herself. The son averred

that the assignment was not such as alleged by the widow. Upon this issue was joined; and the assize was, by consent, turned into a jury. The jurors found in favour of the son. It was ordered that he should have a writ to the Bishop, and damages in the amount of half the yearly value of the church; and in lieu of these damages he elected to have a moiety of the lands of the widow and all her chattels, as provided by the Statute of Westminster II. cap. xviii.

11. *Taumbes v. Skegness* 215

The plaintiffs brought a writ of *quare vi et armis* against a man, alleging therein that they had delivered a certain writing to the defendant in good faith, for his inspection, and that he took and carried it away with force and arms against the peace. It was objected on behalf of the defendant that the two allegations were in contradiction of each other, and abatement of the writ was asked for and granted.

12. *Brandeston v. Burgh* 216

A woman brought her writ of covenant against an Archdeacon. The plaintiff said that the defendant had covenanted to procure a suitable marriage for her, and to provide her with all necessities until he had procured such marriage; and she complained that he refused to provide her with necessities although he had not procured a suitable marriage for her. The defendant said that he had offered a suitable marriage to the plaintiff and that she had refused it; and that it was only upon such refusal that he had ceased to provide her with necessities. The complainant denied that the defendant had ever offered her a suitable marriage or that he had ever provided her with necessities. A day was given to the parties, and on that day the complainant entered a *retraxit*.

13. *Hakun v. Fairweather* 219

A man brought an assize of novel disseisin in the country. The defendant

said the question of the same alleged disseisin was raised in a plea that was then pending in the Court of Common Pleas, and he asked judgment whether, in the circumstances, the assize ought to proceed. The complainant said that it was a question of liability to warranty only that would be tried under the writ pending in the higher Court, and he asked that the assize should proceed. The assize was awarded.

14. *Haplesthorne v. Fairweather* 220

A man brought his writ of entry. The defendant vouched another to warranty, who said that he was not bound to warrant the defendant of the land in demand; and he said that he had, in fact, arraigned an assize of novel disseisin against him in respect of that same land, and he tendered the patent for the assize, and asked judgment whether he was bound to warrant. The defendant said that the vouchee could not thus avoid his liability to warranty; for he, the defendant, had not disseised him of the land as he alleged. The vouchee joined issue, and a jury was ordered.

15. *Gedding v. Ode* 221

A woman brought a writ of entry against a man and said that he had no entry into the tenements in demand save by a disseisor of the plaintiff herself. The defendant replied that the plaintiff had already brought an assize of novel disseisin against her alleged disseisor, and in respect of the same tenements; by which assize it was found that the plaintiff had never been so seised of the tenements that she could be disseised of them. And he asked judgment whether she ought to be received to this writ unless she showed a seisin subsequent to the assize. The plaintiff said that the assize did not pass in respect of the same tenements as those in demand. The defendant averred that it passed in respect of the same tenements. Issue was joined, and a jury was ordered.

H H

INDEX OF MATTERS

- Abatement, Entry by, 72-76, 80
 — of writ by receipt of intervener, 105
 Acquittal of services, 155-159
 Action of *Cooper v. Delegold* cited as an authority, 98
 —, Adjournment of, *see* Adjournment of Action
 —, Settlement of, 45, 46
 — under one statute extinguishes the right to proceed under another, 84
 Adjournment of action, 11, 14, 17, 26, 129, 142, 143, 147, 148
 — —, by order of the King, 147
 Advowson appurtenant to a deanery, 28, 30, 31, 34
 — — to a manor, 27, 34, 192
 —, Assignment of Justices to try right to, 130, 132
 —, A writ may be had in respect of each parcel of a divided, 60
 —, Granted by fine, 14-17
 —, Not a tangible thing, 197
 —, Parcelled, 58-62, 64
 —, Seisin of, can only be had by presenting, 197, 199
 Advowsons, Assigned as dower, 27, 29, 34, 213
 —, Assize for the recovery of, 124
 Ael, Writ of, 174, 175
 Age, 107, 108
 Agreement, Badly drafted, 140
 Aid, 87, 90-92, 94, 96, 97, 100
 — of the King, 28, 29, 30, 35
 Alienation of land held in fee tail defeasable by statute *de donis*, 121
 Alms, Pure, 3, 4, 70, 155, 157, 159
 —, alienation of, 70
 Amercement of defendant, 34, 36, 214
 — of plaintiff, 155, 204, 216, 219
 —, pledges, 219
 —, warrantor, 191
 Ancient demesne, 125-129
 — —, Men of, 126-129
 — —, proved by Domesday, 126, 129
 Andirons, 120
 Answer, double, 82, 222, 223
 Apprentices-at-law, xlii, 10, 90
Aqua non est in solo alicuius, 5
 Argument, right of, reserved, 17, 26
 Arrest upon indictment, 116
 Assize for the recovery of advowsons, 124
 —, *Profert* of patent for, 220
 Attorney, Appearance by, 5, 13, 14, 16, 19, 20, 23, 26, 33, 35, 36, 54, 70, 71, 80, 81, 96, 99-101, 106, 114, 117, 120, 128, 142, 143, 184, 185, 216-218, 221, 224
 — goes into country, because he thinks that judgment will be delayed, 50
 —, Lord's appointment of, against a villein, effect of, 108, 110, 112
 Attornment cannot be made of free alms, 156, 159
 — of purchaser, 156, 159, 178
Ave Maries, 156
 Averment by record, 50, 81, 184
 —, Irregular reception of, 106
 — objected to because it would remove the issue from the lay court, 38, 39
 — of bailment of charter, 148
 Avowants must each answer personally if present in court, 7, 12
 Avowry by a purchaser, prescribed form for, 180
 — for *damage feasant*, 81
 — for homage, fealty, and escuage, 178
 — for rent service, 6, 14, 84, 88, 91, 93, 95

- Avowry made for rent service where the avowant is in possession of half the land charged, 84-94
 — must correspond with the right of action, 91
 — of common appendant, 201
- Bailiffs neglect to attach defendant, 138
 — — — — — distrain defendant, 138
- Bailment of charter, 148
 — of charter, Averment of, 148
 — of manors, 20, 24
- Baptism, Name given in, superseded by that given in Confirmation, 152
- Bastardy, Escheat through, 123
- Bereford C.J. puzzled by a writ, 43
 — tells stories of Hengham C.J., 44
 — — — — — illegal sentences by Justices of Gaol Delivery, xxix
- Betrothal has the effect of marriage, 39, 40
- Bill from the King sealed with the Great Seal of the Chancery, 147
 — — — — — sealed with the Seal of the Chancellor, 148
- Bishop, Writ to, 194, 196
- Body and blood, Relief of, 109, 110, 113
- Bovates of land (ox-gangs), 180, 181
- Breynford, Flood at, 186
- Bristol, Franchise of, 119, 120
- Bull, 146
- Burgage tenure, 82
- Burglary, 116
- Calves, 146
- Cape*, Grand, 45, 165, 183
 —, Little, 45, 182
- Capite*, Tenancy in, 49, 130, 132
- Carucates of land, 3, 4, 24, 88, 89, 93, 94, 148, 179, 182, 184-186, 207-209
- Cathedral churches, not of like nature with other churches, 65
- Chamber, Action for annuity issuing from obligee's, may be brought in any county, 216
- Chancellor, Seal of the, 148
- Chancery, Form of a writ in the, 174, 175
 —, Great seal of the, 147
- Chapel appendant to church, 192-204
 — of Stretton (Staffordshire), 33, 34
- Charter, Bailment of, 148
- Charter, Mutilation of, 109, 111, 112
 — of lands, 124, 125, 164, 190
 —, *Profert* of, 164, 190
- Charters, A woman must surrender her husband's, before she can have dower, 124
 —, Right of action by heirs to claim, from tenant, 124
 —, Royal, 143, 146, 148
- Chattels, Wardship of, 166
- Chirograph, 25, 1-5
- Church door, Endowment of wife at, 38, 39
 — or chapel, Question of, 192-204
 —, profits of the, are of right and not of fee, 37
 —, View of, 37, 38
- Churches :
 All Souls, Southleigh, 70
 Aughton, 193, 198, 201, 203, 204
 Bampton, 100, 101
 Norton, 57, 61, 62, 67
 St. Wulfram, Grantham, 40
 Selsworthy, 213-214
 Stokesley, 1-4
 Thorganby, 192, 201, 204
 —, Cathedral, not of like nature with other churches, 65
- Cinque Ports, Franchise of the, 143-146
- Clerks, Share of damages allowed to, 36, 214
- Common appendant, Avowry of, 201
 — Bench, Justices of, consult with Justices of King's Bench, 45
 — fame, 115-117
 — of pasture, Claim to dower in, 123
 — —, does not fall within demesne, 124
 — —, Writ of, 195
 — Pleas, Court of, advises with Justices of King's Bench, 45
- Commoning, No length of, by sufferance bars ejectment, 82
- Confirmation, Name given by Bishop at, supersedes name given at Baptism, 152
 —, Services cannot be reserved by a, 159
- Consent, Inquest by, 145
 —, Plea by, 145
- Conspiracy, Writ of, question whether it lies against indictors and jurors, 114-117
- Contempt of Court, 45
- County, Body of the, 143-146
 — Court, Removal of hearing from, into Common Bench, 97
 — —, The, is the King's Court, 98
- Court, Contempt of, 45
 —, Suit of, 114

- Court of Becconsall (Lancashire), 155
 — of Bishop of Norwich, 148
 — of Oakbourne, 128
 — of Shepway, 143, 145, 146
 — Christian, 38-40, 59
 — — considers marriage and betrothal as all one, 39, 40
 —, The, desires to advise itself, 50, 65
 Covenant to procure marriage, 216-218
 Covenant to provide necessities, 216-218
 Cows, 18-20, 146
 —, sometimes used for ploughing for lack of oxen, 18
 Cradle, Infant brought into Court in, 161
 Crown, A right that has once accrued to the, can never be severed except by special grant of the King, 64
Cuius est onus eius erit emolumentum, 11
 Customs and services, Writ of, 163
 Cygnets, 4, 6

 Damages in *darrein presentement*, 214
 — in dower, 41, 42
 — in mesne, 158
 — in *quare impedit*, 3, 4, 34, 36
 — remission of, 34
 —, Share of, for clerks, 36, 214
Darrein presentement, Writ of, 51, 64, 66-69, 194-196, 201
 Debt cannot be claimed unless cause of action arises at a certain time, 141
 — claimed as penalty, 142
 Deceit, writ of, 43
De donis condicionalibus, Statute of,
 Alienation of land held in fee tail defeasible by, 121
 Effect of, xxvi-xxix, 177
 Formedon in the descender given by, 121
 Deed obligatory, 84, 87, 91, 93, 95
 —, Tendered in Court, 140, 142
 Deer, 150
 Default of defendant, 102, 104-106, 186
 — of defendants, jury taken by, 147
 — of plaintiff, 1, 3
 — after default by tenant, 160, 161, 209
 — waived, 165
 Defence, Sham, Allegation of, 21
 Defences only open to a defendant in seisin, 205, 206

 'Degrees,' 73, 74, 79, 102, 103
 —, Writ in, 103
 —, No voucher for, 103
 Delay in taking inquest, 147
 Demesne, Common of pasture does not come within, 124
 Disseisin, Tenant by, 87, 90
 Distrain of defendant, 33, 150
 Domesday, 126, 127, 129
 Double answer, 82, 222, 223
 Dower, Advowsons assigned as, 27, 29, 213
 —, Assignment of, 103-105
 —, Assignment of, does not make a degree, 103
 —, A woman must surrender her husband's charters, before she can have, 124
 Draughtsmanship, Bad, 103, 140
 Durham, Franchise of Bishop of, 57, 68

 Ecclesiastical coercion, Marriage by, 191
 Edward I and the Justices of the King's Bench, 44
 'Elect' is the proper style of a Bishop before consecration, 27, 29
Elegit, Writ of, 214n
 Endowment of wife at church door, 38, 39
 Enfeoffment without delivery of seisin, 191
 England, Four seas of, 142
 Entry by abatement, 72-76
 —, Writs of,
 ad terminum qui preteriiit, 77, 207
 dum fuit, 177
 sur disseisine, 177
 Escheat, 8, 11, 12, 123, 140, 163, 164
 —, Writ of, 181, 185
 Escuage, 25, 52, 86, 94, 178-180
 — attracts homage, 178, 179. *And see* Homage
 Esplees, 37, 80
 Espousal and marriage amount to the same, *per* Bereford C.J., 37
 Esquire's robes, 140
 Essoin, 17, 108, 110, 111, 113, 129, 138, 142, 143, 145, 147-149
 — *de malo veniendi*, 104, 106, 148
 — *de servitiis Regis*, 149
 —, Effect of lord's, against a villein, 108, 110, 111, 113
 Essoinee, Surrender of, 107
 Essoins, Roll of, 129, 147
 Exaction of defendants, 146

Excommunication, Publication of, 203
 — — —, release from, 203
 Exeter, Eyre of, 181-183, 185
 Expenses, Recovery of, 147
 Eyre of Exeter, 181-183, 185

Fairs, 101, 102
 Fealty, 49-54, 162, 164, 165
 — — —, Attornment by, 49-54
 Fine of advowson, 14-17
 — — — of lands, 14-17, 51-56, 204-209
 — — — — — pleaded in bar, 14
 — — — — —, *Profert* of, 16, 51
 — — — — —, Text of, 17
 — — — of services, 163
 — — —, Transcript of, sent into Court, 207
 Fishery, Several, 4, 5
 Flood at Breynford, 186
 Formedon in the *descender* given by the Statute *de donis*, 121
 'Four men and the reeve,' 115, 117
 Franchise of the Bishop of Durham, 57, 68
 — — — of the Cinque Ports, 143-146
 — — —, Only the bailiff can claim, 145
 Frankalmoine, *see* Alms, pure
 Free chase, 150
 Free marriage, 176
 Furlong of land, 70, 71

Gage, 4, 5
 — — — and pledges, 180
 Gaol Delivery at Ipswich, 116, 117
 — — — — —, Acquittal at, 117
 Gift of land by wife before marriage, 186-191
 Grand Distress, 32, 45
 Great Seal of the Chancery, 147
 Guardian, Appearance by, 105
 — — — *de facto*, 166
 — — — *de iure*, 166
 — — —, Voucher of, 166
 — — —, Writ of dower against, 120, 123

Hock Day, 97, 128
 Homage, 113, 127, 155
 — — — in arrear, 178-181
 — — — and escuage, 158
 — — — and fealty, 165, 178
 — — — — — and escuage, 50, 52-54
 — — — and suit, 159
 — — —, A gross, 86, 90
 — — — dependant from escuage, 86
 — — — from a parcel, 86, 90

Homage, Question of extinction of, by purchase by the lord, 86, 90
 Horse, Seizure in high road by bailiff of a, 119, 120
 Horses, 146
 — — —, Service with three, 140, 142
 Hounds, 150
 — — —, Battery of, 150
 Hundreds, Extrinsic and intrinsic, 25
 Husband with two names, 186-191

Imparling, 45-47, 81, 157, 183, 220
 Imprecation of parents' curse in event of failure to observe covenants, 25
 Imprisonment, False, 46, 114-116
Indicavit, Writ of, 65
 Indictment, Arrest upon, 116
 Indictors, 114-117
 — — — and jurors, Question whether writ of conspiracy lies against them, 114-117
 Infant brought into Court in cradle, 161
 Inquest by consent, 145
 — — —, Delay in taking, 147
 Inquisition, Return of, under seal, 4
 Intrusion, Writ of, 204, 207
 Issues, complaint that the Sheriff did not return larger, 48

Judgment of avowry, 8-11, 14, 85
 — — — of *cui in vita*, 191
 — — — of *darrein presentement*, 214
 — — — of entry by abatement, 72-76
 — — — of entry by disseisin, 184
 — — — of failure to defend, 47
 — — — of form of writ, 47, 155, 216
 — — — of nonsuit, 1
 — — — of *quare impedit*, 204
 — — — of *scire facias*, 209
 — — — of variance, 6
 — — — of writ, 77
 — — —, execution of, 1
 — — — not ready, 26, 47, 102
 — — —, Transcript of record of, tendered in Court, 137
 — — — wrongfully obtained, 47
 Judicial writ, Seisin got by, 205
 Jurors, Lack of, 71
 — — — and indictors, Question whether writ of conspiracy lies against them, 114-117
 Jury, Writ for, suspended, 106
 Justices, Assignment of, to try right to advowson, 130, 132

King, The, Aid of, 28-30, 35
 —, The, cannot be made to plead in
 any other Court than his own,
 57, 61, 63, 68
 —, Writ from, to the Justices of the
 Common Bench, 133
 —, Writ from, to the Justices of the
 King's Bench, 133
 King's, The, prerogative, 63, 130, 131,
 140
 —, The, prerogative is higher than
 any franchise, 63
 —, The, Prison, 46
 —, Bench, Justices of, sitting in
 Common Bench, 2, 28, 66, 87,
 91, 98, 130-132, 205, 207, 222
 —, Bench, Justices of Common
 Bench consult with Justices of,
 45
 Knight service, 54

Law, Wager of, 148
 Lay fee, 58-68
 Leet, Court, 115
 Lent sowing, 128
 Letters patent of Vicar-General of
 York, *Profert* of, 202
 — of Bishop of Lincoln, 41

Manors :

Astwell, 24
 Becconsall, 155
 Boyton, 164
 Brigham, 135
 Dadyn-ton, 24
 Easthams, 212
 Esebathe, 16
 Eston, 5
 Foxcote, 24
 Ledess, 51
 Little Baddow, 26
 Loterford, 24
 Oakbourne Miles, 125
 Oakbourne Regis, 125
 Ottery Mohun, 191
 Stanlake, 24
 Sternfield, 54, 56
 Steynford, 24
 Stretton, 29, 34, 35
 Teinnes, 24
 Terling, 46
 Thorganby, 191, 201
 Winterbourne Houghton, 24
 Manucaption, 147
 Manucaptors, 146, 147, 150

Marriage, Averment of, 39
 — by ecclesiastical coercion, 191
 —, Covenant to procure, 216-218
 Marshalsea, Defendants coming by
 exaction committed to the, 146
 Merchet, 114, 128
 Mesne issues, Security for, 105, 106
Monstraverunt, Writ of, 125
 Mortdancestor, Writ of, 72, 177
 Mortmain, Appropriation into, 1, 2
 Naifty, Writ of, 113
 Name given in Baptism superseded
 by that given in Confirmation, 152
Ne vexes, Writ of, 162
 'New King, new law, new Justices,
 new masters,' 87
 Nonsuit in *quare impedit*, 1, 2
 Norwich, Court of Bishop of, 148
 Novel disseisin, Assize of, 59, 86, 90,
 92, 93, 151, 220, 222-224
 Nunnery of Nun Coton, 215

Oath taken in church to observe
 terms of covenant, 25

Oaths :

By God's blood, 44
 By St. Mary, xxix
Par Dieu, 66, 98

Ordinaries, 60-62, 64-66, 69, 130

—, Writ to the, 130, 132, 140

Orisons, 158

Oxen, 146

Oyer of fine, 205

— of writ, 6, 9

Parcener, Receipt of, in aid, 210-212

Parliament, Bill in, 130

Pasture, Common of, 81, 82

Pater nosters, 156

Payment for leave to plead, 209

Penalty, Debt claimed as, 142

Penkridge, Deanery of, the right of
 English Archbishops of Dublin, 28,
 30, 31, 35

Pernors, 7

Pickages, 102

Pigs, 146

Plea by consent, 145

—, correction of, 88

Pleading, Collusive, 144

Pledges to answer writ of trespass.
 Refusal to find, 120

Plough, Beasts of the, 18

Pope, Collation by the, 27, 29, 30, 32

Prayers, Benefit of, 157, 158

Prebends, Patronage of, *sede vacante*,
 59, 62, 65, 67

- Prece parcium*, 17, 48, 143
Precipe quod permittat, Writ of, 58
 — *quod reddat*, Writ of, 85, 89
 Presentation to a benefice *per lapsum temporis*, 59
 Prison, The King's, 46
 Process, Annulment of, 47
 — improperly continued, 34
 Procurors, 114–117
Profert of charters, 22, 98, 146, 148, 221
 — of indentures, 22, 212
 — of letters patent of the Vicar-General of York, 202
 — of patent for assize, 220
 Prosecution, Malicious, 114, 115
 Protection, The King's, 149
- Quare impedit*, damages in, 33, 34, 36
 — —, damages in, Share of, allowed to the clerks, 36
 — —, Writ of, 51, 64, 66–69, 101, 194–196, 201
 — *vi et armis*, 7
Quasi diceret, 18, 59, 60, 73, 75, 76, 88, 91, 103, 152, 222
Quod permittat presentare, writ of, 58
- Receipt of issue, 161, 162
 — of parcener in aid, 210–212
 — of remainderman, 162
 — of reversioner, 102, 104, 105, 210–212
 — of wife in husband's default, 40
 Reception during nonage, 107, 108
 Record, Averment by, 50
 —, Court certified by, 144
 —, Vouched, 139, 181
 —, Transcript of, sent into the Common Bench, 185
 — and process of proceedings in the Common Bench brought into the King's Bench, 130, 133, 134
 Recovery of expenses, 147
 — purges all previous torts, 79
 Reeveship, a villein service, 109, 110, 114, 128
 Relief of body and blood, 109, 110, 113
 Religion, Men of, 1, 2
 Remainderman, Receipt of, 162
 Removal of hearing into Common Bench from County Court, 97
 Rent in arrear for forty years, 98, 99
 — seck, 86, 90
 Replevin, Right to tenancy is not triable in, 87
 Replevin, Writ of, 195
Res inter alios acta aliis non preiudicare debet, 51, 78, 79, 144, 161
 Re-summons, 203
Retraxit, 219
 Reversioner, Receipt of, 210–212
 Robes, Esquire's, 140
 Rose, Yearly service of a, 49, 51–53, 56
- Scutage, 25, 54, 113, *and see* Escuage
 Seal, Great, of the Chancery, 147
 — of the Chancellor, 148
 — appended to charter, 25
 Seas, Four, of England, 142
 Security for mesne issues, 105, 106
 See, Wardship of vacant, 57
 Seisin, Enfeoffment without delivery of, 191
 — got by judicial writ, 205
 —, Recovery of, 107
 Service, Partible, 86, 89, 94
 — with three horses, 140, 142
 Services cannot be reserved by a confirmation, 159
 —, Fine of, 163
 —, Partial extinction of, by purchase by the lord, 85, 86
 Settlement of action, 45, 46
 Sexton, Creation and endowment of office of, 65
 Sham defence, 21
 Sheriff does not return inquest, 41
 — — writs, 33, 125, 150
 Sheriff does not seize land, 105
 — has no more authority to try causes by writ than Beresford C.J. has to sing masses, 98
 Sheriff's Turn, 116, 117
 Spigurnel J. tells of an illegal sentence by Justices of Gaol Delivery, xxx
 Stallages, 102
 Stealing goods and chattels, 117
 Suit, Apportionment of, 85, 89, 94
 — of Court, 114, 155
 Surprise, No one to be taken by, in the King's Court, 44
 Surrender of fee and right by fine, 14–17
 Swans, 4, 5
 — errant, 5
 — —, Commoning with, 6
- Tenancy, Right to, not triable in replevin, 87
 Tenant by disseisin, 87, 90

- Tithes, 37
 Tolls, 102
 Torts, All previous, purged by recovery, 79
 Transcript of fine sent into Court, 207
 — of record in the Roll of the Eyre of Exeter sent into Common Bench, 185
 — of record of judgment tendered in Court, 137
 Trespass, In a writ of, only necessary to lay the defendant's name, without adding his office, 30
 Troth, Plighting of, 38-40
 Turn, Sheriff's, 116, 117

Utrum, Writ of, 59, 64

 Variance between writ and claim, 124
 — between writ and count, 6, 12, 156, 174, 175
 Verdict, Special, 76
 Vicarage, A, cannot be constituted without the assent of the Bishop, parson and patron, 60, 66
 —, A, is a portion of the parsonage, 66
 —, The stipend of a, must be allocated from the parsonage, 60
 — of Norton (co. Durham), 57-70
 —, The chapel of Stretton (Staffordshire), 27-35
 Vicar's portion, The, is a third part of the value of the church, and is allocated by the Ordinary, 66
 View of church, 37, 38
 — of land, 72, 77, 124
 — never granted in writ of Intrusion, 77
 Villein services, 109, 110, 113, 114, 125, 128
 — services and customs, Grant of, 164
 Villeinage, Averment of, 110, 111
 —, Exception of, 108, 110-114, 126, 127, 129
 — must be proved through four successive generations, 113
 Villeins, 25, 108-114, 126-129, 164
 —, Enfeoffment of, by charter, 109-112
 Virgates, 125, 128
 Voucher of grantor by tenant, 106, 174-176
 — of guardian by claimant to dower, 166
 Voucher of heir under a deed, need of care in, 11
 — of husband and wife by themselves, 70, 71, 118
 — of lessor by tenant, 151
 — of record, 139, 181

 Wager of law, 212
 Waiver of default, 167
 — of exception, 30
 — of plea, 215
 Wapentake, Fine of, 178-180
 Wardship of chattels, 166
 — of vacant see, 57
 —, Seisin of, for half a year, conters no right, 49
 Warranty or acquittance, The heir on the father's side will not be forced to give, unless he be seised as heir of the issue of the father and mother, 11
 — of Charter, Writ of, 50-53, 55, 56, 156, 204
 —, Voucher to, *see* Voucher
 Water mill, 125
 Wife, Gift of land by, before marriage, 186-191
 —, second, Issue of, will not share in land settled on husband and first wife in fee tail, 122
 Winter sowing, 128
 Woodgavel, 128
 Writ, Abated, 80
 —, 'A new and truly wonderful,' 101
 —, badly drafted, 103
 —, Bereford C.J. puzzled by, 43
 —, Defendant called upon to give a good, 79
 —, Form of a, in the Chancery, 174, 175
 —, Good, suggested, 73, 74, 77, 78, 80, 98, 192
 —, Inconsistencies in, 216
 —, Leave to sue out better, 37, 38, 73*n*, 141
 —, Refusal to give better, 195
 —, Removal of, 97
 — to Bishop, 32-34, 58, 63, 67, 69, 70
 — to summon wife, 87, 91, 92, 96
 — to summon wife did not issue of old time, 97

 Yardland, 190

INDEX OF PERSONS

- Abbots:
 Bayham, 143-148
 Bec-Herlowyn, 125-129
 Hartland, 155*n.*
 Holland, 155
 St. Benet of Holme, 108, 110-114
 St. Mary of York, 1-4
 Shrewsbury, 81
 Alan, Richard the son of, 232
 Alemane, Godkin of, 41
 —, Maud, his wife, 41
 Alman, William, 145, 147
 Amundeville, *see* Mundeville
 Anefield, William of, 119
 Appleton, Ralph of, 116, 117
 Arundel, the Earl of, 150
 Asherugge, Fremund of, 46
 Aston, R. of, 221, 224
 —, Joan, his wife, 221, 224
 Attergot, Giles, 'quod non est in rerum natura,' 32
 Attewere, William, 119
 Attewych, Walter, 127
 Aumale, Geoffrey of, 176
 —, Isabel, Countess of, 44
 Aune, John of, commissioner, 46
 Augre, Adam of, 46, 48

 Baker, John the, 145, 147
 Balliol, Guy of, 3, 4
 Bampton (Devon), 100, 101

 Bard, Richard, 164
 Bassingbourne, John of, 42, 45-47
 Batecoumbe, Gilbert of, 208
 —, Agnes, his wife, 208
 Bath and Wells, Bishop of, 214
 Baudry, Harry, 218
 Bavastre, Thomas, 4
 Bavent, Thomas of, 5
 Bayham, the Abbot of, 143-148
 Bayse, Thomas, 163-165
 Beaucol, William, 72, 75, 77, 80, 81
 —, Cecily, his wife, 72, 75, 77, 80, 81
 —, William, his son, 72, 75, 77, 80, 81
 Bec, Anthony of, Rector of Brigham, 57-70, Bishop of Durham, 134, 135
 Beche, Harry of, 164,
 —, Cassandra, his wife, 164
 Beckenham, Simon the bailiff of, 19
 Beckingham, Elias of, Justice of the Common Bench, 56
 Bedenhale, William of, deprived clerk, 35
 Bedwyn, Walter of, parson of Aughton, 192, 196, 201
 Beeby, Roger of, 146
 Beeston, William of, 146
 Belde, Simon, attorney, 190
 Belyng, John of, 176
 —, John, his son, 176

 Beneland, John of, 146
 Benington, Simon of, 146
 Bensted, John of, Justice of the Common Bench, 17
 Bergh, Richard atte, 146
 Berghe, William at, 145, 147
 Bertram, John, 3
 Beuveysin (Porteveysin), Harry, 20, 23-26
 —, Sarah, his wife, 20, 23-26
 Beverley, John of, 132, 134, 139, 140
 Birmingham, Andrew of, 146
 Bixley, Richard of, 5
 Blound, Richard the, 146
 Bole, Viane of, 155-159
 Bothel, Justin of, 145, 147, 148
 Bradfield, Thomas of, 146
 Brakenext, Richard, 116
 Brampton, Thomas of, attorney, 54
 Brandeston, Hugh of, 217
 —, Margaret, his wife, 217
 —, Joan, her daughter, 217
 Brawater (Sussex), 207, 208
 Bregel, John, 145, 147
 Bren, Martin, 145, 147
 Briddesthorpe, John of, 26
 Bridlington, the Prior of, 177-181
 Brigham, Thomas of, clerk, 135
 —, Walden, lord of the manor of, 135
 —, John, his son, 135

- Brigham, Alice and Joan,
the daughters of John,
135
- Brisley, Roger of, 106
- Bristol, the Constable of
the Castle of, 120
- , the King's bailiff
in, 119, 120
- Brittany, Sir John of, 59,
62, 65
- Brom, Adam of, attorney,
54
- Bromham, Robert of, 145,
147
- Brook, Hugh of, 116, 117
- Brun, Maurice the, 19
- Burgh, William of, Arch-
deacon of Berkshire,
217, 218
- Burnel, Edward, 140-142
- , Philip, his father,
140-142
- Burnton, William of, Jus-
tice of the Common
Bench, 208
- Burton, Thomas of, attor-
ney, 81
- Butler, Edmund the, 83
- , William the, 46, 48
- , John, his brother,
46, 48
- Cambridge, Edmund of,
146
- Carey, Lawrence of, 119
- Carman, Roger, 116
- Carru, John of, 190
- , Nicholas of, 190
- Carswell, H. of, 189
- , Richard of, 190
- , Agnes, his mother,
91
- Cauz, Robert of, 180
- Champion, John, 114
- , Robert the, 33-36
- , Agnes, his wife,
33-36
- Cheny, Alexander, 53
- Chichele, William, 127
- Chiddingstone, John of,
146
- Child, John, 146
- Chilly, Thomas, 145, 147,
148
- Chynnot, John, 218
- Cinque Ports, bailiff of
the, 144, 145
- Clare, Robert of, 120
- Claymund, John, 218
- Clerk, John the, of
Bicknor, 150
- Cobyoun, Agnes, Prioress
of Markeyate, 99
- Cockermouth, Jordan of,
138
- , Walter, his son,
138
- Cogan, Thomas (Roger),
100-102
- Cok, Richard, 138
- Cokelyn, Thomas, 154
- Colchester, Alan of, 82
- Colewell, Ralph of, 181-
186
- , Philip (Ralph), his
father, 186
- Compton, Walter of,
attorney, 142
- Cooper, John the, 84, 87,
91, 93, 95, 96, 98
- Corbet, T., 123
- , Maud, 222
- Cornhill, Edmund of, 146
- Cornwall, Edmund, Earl
of, 49, 50, 52-55
- , Margery, Countess
of, 49, 50, 52-55
- Courtenay, Hugh of, 130,
132-140
- Coventry, Prior of, 37
- Crandene, William of,
attorney, 216
- Crandon, Hamon of, 100
- Cranley, James of, 145,
147
- Creake, Thomas of, attor-
ney, 125
- Crei, Roger of, 198
- Crispian, William, 41
- , Maud, his wife, 41
- Crispin, Miles, 129
- Croft, Denis of, 207-209
- Croup, Walter, 145, 147
- Curlu, Richard, 125
- , Alice, his wife, 125
- , Thomas, 125
- Davy, Richard, 84, 87,
88, 93, 95, 96
- Deepdale, Hugh of, 106
- Delamere, Robert, 218
- , Piers, his son and
heir, 218
- Delegold (Elegod, Hil-
gold, Ildok, Legole), 84,
87, 88, 91, 93, 95, 98
- , Isoud, his wife, 84,
87, 91, 93, 95, 98
- Despenser, Hugh the, 147
- Devon, Reviers, Earl of,
130*n*.
- Devonshire, Justices of
the Eyre of, 185
- Downe, William, 163-165
- , Maud, his wife,
163-165
- Drinkstone, William of,
97-100
- , Mary, his wife, 99,
100
- Dullingham, Piers of,
attorney, 100
- Dunning, Eustace, 96, 97,
99, 100
- , Joan, his wife, 100
- Duraund, Richard, 211
- Dynon, the lord Oliver,
knight, 25
- Elegod, *see* Delegold
- Ely, Bishop of, 87
- Ergleys, John, 119, 120
- , Stephen, 119, 120
- Erlham, Robert of, 146
- Esebathe (Hesbath),
Maud, daughter of
Stephen of, 16
- , Richard of, 16, 17
- , Robert of, 16, 17
- Estrild, John of, 116, 117
- Eton, Nicholas of, 46, 48
- Eure, John of, 1, 2
- , Agnes, his wife, 2
- Everard, William, 218
- Exchequer, Barons of the,
183
- , Treasurer and
Chamberlains of the,
185, 207
- Exham, Nicholas of, 187,
188
- , Maud, his wife, 187
- Eye, Honour of, 49
- Fairweather, Oliver, 219,
220
- Foghtlestone, William of,
211, 212

- Ford, Adam of the, 140-142
 —, John of, 119
 Forz, Isabel of, Countess of Aumale and Devon, 130-132, 134-140
 —, William of, Count of Aumale, 130*n*
 Foxham, N. of, 190
 —, Maud, his wife, 190
 Foxton, Robert of, 146
 Frere, Thomas, 180
 Frome, John of, attorney, 23

 Garneburghe, John of, clerk, 67
 Gidding, John of, 224
 —, Joan, his wife, 224
 Gerard, G., 216
 —, Joan, his daughter, 216
 Giffard, Osbert, knight, lord of Dadyngton, 20, 23-26
 Gisleham, William of, Justice, 56
 Glover, Andrew the, 116, 117
 Goldington, William of, 42, 45-48
 Gosselyn, Walter, 117
 Gras, Ralph the, 42, 46
 —, Richard the, 42, 46
 Green, William of the, 116, 117
 Grenefeld, William of, Archbishop of York, 57
 Grimston, Roger of, 180, 181
 —, Gillian, his wife, 180, 181
 Grunsard, Alice, 153
 —, Thomas, her son, 153
 Gynes, Richard of, 163-165
 —, Margery, his wife, 164

 Haccombe, Stephen of, knight, 71
 Haket, John, 150
 Hakun (Haclone), Ellis, 219-221
 Hakun, Robert, his son, 219-221
 Hales, Roger of, Justice of Gaol Delivery, 116
 Hapelsthorpe, Reynold of, 220
 —, Robert, his son, 220
 Hastingleigh, William of, 189
 Havering, Richard, Elect of Dublin, 28, 31, 33-35
 Haye, Roger of the, 192, 196, 201
 —, William of the, 163-165
 Hayward, Harry (Harvy, Nicholas) the, 186-191
 —, Agnes, his wife, 186-191
 Helhoughton, Hugh of, 105
 Hengham, Sir Ralph of, Chief Justice, 44, 51, 123
 Hertford, Robert of, Justice of the Common Bench, 56
 Hexton, Harry of, attorney, 142
 Heyr, Robert the, bailiff of Woodstock, 25, 26
 Hilgold, *see* Delegold
 Holewey, John of, attorney, 184
 Holland, the Abbot of, 155, 159
 Holme, the Abbot of St. Benet of, 108, 110-114
 Holy Trinity of the Wood, Nuns of the, 99
 Hothwayt, Thomas of, 135
 —, Joan, his wife, 135
 —, Gilbert, his son, 135, 137
 —, Thomas, his grandson, 130, 132-140
 Hoveden, Adam of, 146
 Hoveworth, John of, attorney, 211
 Huntingfield, John of, 50, 52
 —, Roger of, 55-57
 —, Nicholas, his wife, 55-57
 Hunworth, John of, 106
- Huse, Master Roger, parson of Bampton (Devon), 100-102
 Hyde, Simon atte, 146
 Hydenye, Simon of, 145-148

 John, the lord, knight, son of Guy, 25, 26

 Kairwent, Harry of, the King's bailiff in Bristol, 119, 120
 Kelby, Robert of, attorney, 216
 Kempe, John, 116, 117
 Kendal, John of, attorney, 80
 Kent, Roger of, 146
 King, Ellis, 105
 —, Margery, his daughter, 105
 Kings:
 William the Conqueror, 3, 125, 128
 John, 125
 Edward I, 44, 128
 Knapton, Richard of, 146

 Lakenham, Harry of, 146
 Langelsume, Alexander of, 98, 99
 Launde, William de la, 6-14
 Leek, John of, Elect of Dublin, 27-36
 Legole, *see* Delegold
 Leicester, Roger of, Justice of the Common Bench, 208
 Leominster, Richard of, 119
 Lestrangle, Fulk, 123
 Lewes, the Prior of, 83
 Lincoln, Bishop of, 40, 41
 Lisle, Sir John de, Justice of Assize, 72, 75, 81, 224
 Littlewatte, Simon, 145, 147
 Loccumbe, Hugh of, 213, 214
 —, John, his son, 213
 —, Joan, his wife, 213

- Longchamp, Isabel of, 10,
 13, 14
 Lot, John, 145, 147
 Lound (Suffolk), 116
 Lovetot, John of, Justice
 of the Common Bench,
 139, 208
 Lyons, the lord Richard
 of, knight, 25, 26
 Lytton, John of, 189
- Maidwell, Simon the son
 of Master William of,
 25, 26
 Malemeyns, Robert, attor-
 ney, 19
 Manby, Ralph of, 192,
 201, 203
 Mandot, William, 150
 Manston, the lord Richard
 of, knight, 25
 Markeyate, Prioress of,
 96-100
 Marston, John of, parson,
 70, 71
 Mason, John the, 105, 106
 —, Margery, his wife,
 105, 106
 —, Geoffrey, John,
 Ralph, Thomas, Walter,
 and William, his sons,
 105, 106
 —, Agnes and Maud,
 his daughters, 105, 106
 Mauentwyth, Robert of,
 134, 135
 —, Alice, his wife, 135
 Mercer, Piers the, 6-14
 Merston, William of,
 attorney, 176
 Metingham, John of, Chief
 Justice, 55, 56
 Mill, Robert at, 150
 Miller, Thomas the, 117
 Molyn, John, 145, 147
 Montford, the lord Nich-
 olas of, 25
 Montfort, Gillian of, 211
 —, William of, 209
 Morce, John, 41
 Mountfort, Walter, 22
 Mundeville (Amundeville),
 Richard of, 53
 —, Robert of, 54-56
 —, William, 49
 Mundham, John of, 146
- Munsels, Alan de, 215*n*
 Murdevale, John of, 14
 Musgrave, Robert of,
 clerk, 135
- Narford, Peronel of, 209-
 212
 —, Maud, her sister,
 210-212
 —, Robert of, 209, 210
 Neve, William, the, 117
 —, John, his son, 117
 Nevill, William of, 53
 Newport, William the son
 of John of, 146
 Northampton, Adam of,
 commissioner, 46
 Northwich, William of,
 attorney, 150
 Norton, John of, attorney,
 106
 Norwich, bailiff of the
 Bishop of, 148
 Nuns of the Holy Trinity
 of the Wood, 99
- Ode, Harry, 224
 —, Maud, his wife, 224
 —, Thomas, 224
 Ormsby, William of, Jus-
 tice of Gaol Delivery,
 116
 Ossington, Richard of, 208
 —, Agnes, his daughter,
 208
 —, Thomas of, 207-209
 —, Gillian, his wife, 208
 —, Thomas, his son, 208
 Otley (Ottele), William of,
 attorney, 35
- Pace, Robert, clerk, 35, 36
 Packer, Richard the, 119
 Palmer, John, attorney,
 71, 190
 Panier, John the, attor-
 ney, 101
 Park, William of the, 184,
 185
 —, Guenever, his wife,
 184, 185
 Paveley, Ada of, 232
 Payn, Thomas, 41
- Peicel (Peusel), William, 4
 Peret, William, attorney,
 184
 Pickering, Robert of,
 Canon of York and
 Vicar-General, 202
 Pickworth, John of, 13,
 14
 Plumberewe, Thomas of,
 209, 211
 Poer, William le, knight,
 25, 26
 Pomeray, Geoffrey de la,
 174-176
 —, Mary (Margery), his
 wife, 174-176
 —, Harry, his father,
 174-176
 Pontefract, Thomas of,
 202
 Portebref (Portbury),
 William, 20-23, 26
 Potton, John of, 19
 Poverel, John, 218
 Prior of Bridlington, 177-
 183
 — of Coventry, 37
 — of Lewes, 83
 Prioress of Markeyate,
 96-100
 Puckle, James of, 150
 Purley, William of, 182
 —, Sibyl, his wife, 182
 Pygoun (Pycoun), Robert,
 40-42
- Ralegh, Andrew of, clerk,
 214
 Raley, John of, 176
 —, Joan, his wife, 176
 Ralthe, Harry of, 176
 Ranuel, Robert of, 155,
 159
 Retford, Robert of, Jus-
 tice of Assize, 224
 Reymerston, Nicholas of,
 attorney, 96
 Richard, Harry, 127
 Richmond (Yorkshire),
 Archdeacon of, 139, 140
 Ridevale, Clerk of the
 Court, xlvi, 45, 104,
 108
 Rippingale, Nicholas of,
 attorney, 40, 41
 River, John of the, 150

- Rochester, Sir Solomon of, Justice of Eyre, 183, 185
 Rochford, Ralph of, knight, 25
 Roges (Rogus), John, clerk, 214
 —, Master William, clerk, 213
 —, Simon, 183–186
 Romney, Robert of, knight, 25, 26
 Ross, William of, 212
 —, Maud, his wife, 212
 Rothelaye, Adam of, xlviii
 Rous, Philip the, 153
 —, Dulcia (or Alice), his sister, 153
 Roys, John, 108, 110–114
 —, Humphrey, great-grandfather of, 109
 —, Aldeston, great-grandfather of, 110, 112
 Russell, John, 145, 147
 —, William, 154
- St. Ives, William of, 224
 —, Maud, his wife, 224
 Saleman, John, 146
 Sampson, John, 115
 —, Richard, 116, 117
 Sanford, John of, Archbishop of Canterbury, 36
 Sarette, Joan de la, Prioress of Markeyate, 99
 Sauntaner, Ralph, 150
 Scot, Robert, 150
 Sewell, John, attorney, 100
 Seyton, Master Roger of, Justice of the Common Bench, 136, 137
 —, —, clerk, 134, 136
 Shotesham, Ralph of, attorney, 212
 Shrewsbury, Alan the glover of, 81
 —, Master Alan of, 216
 —, the Abbot of, 81
- Sihalcoumbe, Walter of, 218
 Skegness, Brother Walter of, Master of Nun Coton, 215
 Skelton, John of, attorney, 20
 Snitterley, Richard of, 48
 Soham, John of, 164
 —, Maud, his wife, 164
 Somerton, John of, attorney, 71
 Stamford, John of, 70, 71
 Stonore, John of, knight, 71
 Stretton, Richard of, 34
 —, Agnes, his wife, 34
 —, Richard, his son, 34
 —, Thomas of, chaplain, 33
 Strode, John of the, 119, 120
 Stubber, John the, 48
 Swinethorpe, Walter of, attorney, 143
- Tascard, Adam, 54
 Taumbes, Hervey of, 215
 —, Agnes, his wife, 215
 Tebaud, William, attorney, 212
 Thenebregge, John of, attorney, 102
 Thornsett, Ralph of, 40, 41
 —, Agnes, his wife, 40, 41
 Thorp, Master Robert of, Justice, 56
 Thwing, Marmaduke of, 72, 75, 77, 80
 Tofts, Richard of, 146
 Toly, Piers, attorney, 176
 Torny, Simon of, 25
 Trowe, James of, knight, 25
 Twynham, Walter of, 134
 —, Isabel, his wife, 134
 Tyveteshale, William of, 54
- Upton, Isaac of, attorney, 23
- Valence, Aymer of, 147
 Vaux, Hubert of, 192, 196, 198, 201
 —, Maud, his daughter, 192, 196, 201
 —, Thomas, her son, 192, 196, 201
 —, John of, 211, 212
 Veneour, Richard the, 151
 —, Christian, his wife, 151
 Vere, Sir John de, 2
 Virley, Thomas of, 53
- Wald, John of, 37
 Wallingford, Maud of, 125ⁿ
 Walraund, John, 70, 71
 —, Joan, his wife, 70, 71
 Ware, John of, 151
 Webster, John the, 116, 117
 Westhale, Adam of, attorney, 5
 Weyland, Thomas, Justice of the Common Bench, 207
 Whaite, William, 40
 Whitedyke, Bartholomew of, 145, 147
 Whyte, Richard the, 127
 William the son of Sweyn, clerk, 34
 Wodesham, John of, 150
 Wodhull, Adam of, 154
 Wolverhampton, Clement of, attorney, 35
 Wood, John of the, 17
 Worstead, William of, 116, 117
 Wygge, Thomas, 145, 147
 Wynchehulle, Walter of, knight, 25, 26
 Wyville, John of, 13, 14
- York, Abbot of St. Mary's, 1–4
 —, — (Richard), 3
 —, — (Savary), 4
 —, Archbishop of, 3, 57, 203

INDEX OF PLACES

- Ailsmere, 4, 5
 Athelingmere, 5, 6
 Aughton (Yorkshire),
 church of, 193, 198,
 201, 203, 204
- Baddow, Little, Manor
 of, 46
 Beccles (Suffolk), 116, 117
 Beconsall (Lancashire),
 155
 Beckenham (Begenham),
 19, 20
 Berkshire, County of, 218
 Bicknor, 150
 Billingham, 67
 Bixley, 5
 Blythford (Suffolk), 116,
 117
 Borewell, 224
 Boston (Lincolnshire), 149
 Bottisham, 224
 Boyton, Manor of, 164
 Bramford, 182
 Breynford, 186
 Brigham (Cumberland),
 132, 137, 138
 —, Manor of, 135
 Bristol, 119, 120
 —, Castle of, 120
 Bromhill (in Sudbury,
 Suffolk), 95
- Cambridge, 224
 —, County of, 98, 146
 Canterbury, 99
 Carbrooke, Little (Nor-
 folk), 95
 Chelmsford, 42, 43, 46
 Cinque Ports, Liberty of
 the, 143-146
 Cockermouth, Liberty of,
 138
- Colewell, 184
 Corbridge (Northumber-
 land), 232
 Cranworth (Norfolk), 95
 Crohom, Vill of, 180
- Easthams (Somerset),
 Church of, 212
 —, —, Manor of, 212
 Elm, 23, 24
 Esebath (Hesbath), 14-
 17
 Eston, Manor of, 5, 6
 Exeter, 181-183, 185
- Gamlinghay (Cambs), 99
 Gloucester, 120
 Gonerby, 40, 41
 Grantham, 40
 —, Church of St. Wulf-
 ram in, 40
 Great Massingham (Nor-
 folk), 105
- Hamelak, 212
 Helhoughton (Norfolk),
 105
 Higham Ferrars (North-
 amptonshire), 153
 Honiton, 184
- Ipswich, 116, 117
 —, the King's Gaol at,
 116
 Isleham, 163
- Kelby (Lincolnshire), 215
 Kent, County of, 146
 Kirkele, 198
- Lapworth (Warwickshire),
 218
 Ledess, Manor of, 51
 Lincoln, County of, 146
 Little Baddow, Manor of,
 46
 — Carbrooke (Nor-
 folk), 95
 Littleborough, 220
 Loccumbe (? Locking,
 Somerset), 213
 —, Church of, 213, 214
 London, City of, 146
 Lund (Yorkshire), 80
 Luppitt, 190
 Lynn (Norfolk), 149
- Manthorpe, 40, 41
 Marshalsea, The, 146
 Massingham, Great (Nor-
 folk), 105
 Mutford, Hundred of
 (Suffolk), 87
- Norfolk, County of, 146
 Northampton, 154
 Northwalpenne, 176
 North Walsham (Nor-
 folk), 113
 Norton (co. Durham), 57,
 61, 62, 67, 69
- Oakbourne, Manor of,
 125-129
 —, Miles, Manor of,
 126, 127-129
 —, Regis, Manor of,
 126, 127-129
 Ogbourne-St. George, 125*n*
 Osbournby, 13
 Otham (Kent), 143-146
 Ottery Mohun, Manor of,
 191

- Papworth Everard (Cambridgeshire), 163, 164
 Penkridge, 27-36
 Pevensey (Sussex), 143*n*, 145-147
 Portman Islese, 81
 Potton (Potone), 19

 Reymerston (Norfolk), 96
 Ridecroft (in Sudbury, Suffolk), 95, 96

 St. John, Vill of (Scotland), 149
 Sarratt (Herts), 99
 Sarum, 218
 —, New, 217
 Scappingclive, 191
 Scretton, 220
 Selworthy (Somerset), Church of, 213, 214
 Sheppey (Kent), 143, 145
 Shertestokynge (in Gamlinghay, Cambs), 99

 Shrewsbury, 81, 82, 216
 Smithsland (Smethesland), 20
 Southleigh, 70
 Stafford, County of, 216
 Stanton, 37, 38
 Sternfield, Manor of, 54, 56
 Stickney (Lincolnshire), 125
 Stokesley, 2, 3, 4
 Stretton, 29-35
 Sudbury (Suffolk), 95, 96
 Suffolk, County of, 146
 Surrey, County of, 146
 Sussex, County of, 146
 Swinethorpe (Lincolnshire), 141, 142

 Tarring (Sussex), 207, 208
 Tees, the river, 68
 Teinnes, 23, 24
 Terling, Manor of, 46

 Thorganby (Yorkshire), Church of, 192, 201, 204
 —, Manor of, 192, 201
 Tyne, the river, 68

 Under Prior Garth, The, 180

 Wallingford (Berks), 83
 Walsham, North (Norfolk), 113
 Watton (Norfolk), 211
 Wayneford (Suffolk), 117
 Westhale, 5
 Wiltshire, County of, 218
 Windsor, 147
 Wood Rising (Norfolk), 95
 Woodstock, 25

 Yattendon (Berks), 218
 York, 1, 2, 3, 4, 72, 75
 —, County of, 146

Selden Society.

FOUNDED 1887.

TO ENCOURAGE THE STUDY AND ADVANCE THE KNOWLEDGE OF THE
HISTORY OF ENGLISH LAW.

Patron :

HIS MAJESTY THE KING.

President :

THE RIGHT HON. VISCOUNT HALDANE, K.T.

Vice-Presidents :

THE RIGHT HON. LORD JUSTICE WARRINGTON.

THE RIGHT HON. LORD PARKER.

Council :

MR. SIDNEY O. ADDY.	HIS HONOUR JUDGE LOCK.
MR. W. PALEY BAILDON, F.S.A.	THE RIGHT HON. LORD MOULTON.
DR. EDWIN FRESHFIELD.	MR. R. F. NORTON, K.C.
SIR CHARLES CHADWYCK HEALEY, K.C.B., K.C.	MR. WALTER CHAS. RENSHAW, K.C.
MR. BOYDELL HOUGHTON.	THE RIGHT HON. SIR ROBERT ROMER, G.C.B.
SIR HENRY J. JOHNSON	MR. T. CYPRIAN WILLIAMS.
THE HON. MR. JUSTICE JOYCE.	MR. JAMES G. WOOD.
PROFESSOR COURTNEY S. KENNY.	

Literary Directors :

THE RT. HON. SIR FREDERICK POLLOCK, BART. (13 Old Square, Lincoln's Inn).	PROFESSOR VINOGRADOFF (Court Place, Iffley, Oxford).
--	---

Honorary Auditors :

MR. J. W. CLARK, K.C.	MR. HUBERT HALL.
-----------------------	------------------

Secretary :

MR. H. STUART MOORE (6 King's Bench Walk, Temple, London).

Honorary Treasurer :

MR. J. E. W. RIDER (8 New Square, Lincoln's Inn, London).

ANNUAL SUBSCRIPTION . . . ONE GUINEA.*

Persons becoming Members may subscribe for any of the preceding years of the Society's existence, and in that case will be entitled to a copy of the publications issued for each year for which they may subscribe.

They may also obtain a complete set of the past publications at half price.

Non-members can obtain the Society's publications from

Mr. B. QUARITCH, 11 Grafton Street, New Bond Street, W.

* In America, \$5¹⁵.

October 1915.

VOL. XI.

K K

The Council will be grateful for any information upon the contents and custody of any MSS. which may be of sufficient interest to be dealt with by the Society.

All communications may be addressed to the Secretary,

Mr. H. STUART MOORE,

6 King's Bench Walk, Temple, London, E.C.

PUBLICATIONS.

The Volumes already published are:

- Vol. I., for 1887. SELECT PLEAS OF THE CROWN. Vol. I., A.D. 1200-1225. Edited, from the Rolls preserved in the Public Record Office, by F. W. MAITLAND, Downing Professor of the Laws of England, Cambridge. With Facsimile. Crown 4to. Price to non-members, 28s.

A selection from the earliest records of English criminal justice. These criminal cases throw much light on the manners and customs of the people; they illustrate the working of the ordeals of fire and water, and show how a substitute was gradually found in trial by jury. They are mostly cases of felony, but care has been taken to collect whatever throws light on the procedure of the Local Courts, the system of frankpledge, the organisation of counties and boroughs for judicial purposes, &c., &c.

- Vol. II., for 1888. SELECT PLEAS IN MANORIAL AND OTHER SEIGNORIAL COURTS. Vol. I., Henry III. and Edward I. Edited, from the earliest Rolls extant, by Professor F. W. MAITLAND. Crown 4to. Price to non-members, 28s.

A selection from the oldest manorial records. These embrace the whole legal life and much of the social life of a mediæval village; including land held on villain tenure, services, rights of common, personal actions for debt and trespass, leet and criminal jurisdiction, misdemeanours, the system of local police and frankpledge, trading communities, and the law merchant as administered at a great fair. The selections are from the rolls of the manors of the Abbey of Bec in 13 counties, of the honour of the Abbot of Ramsay in seven counties, his fair of S. Ives, and his manors in Huntingdon, and of other manors in Berks and Wilts.

- Vol. III., for 1889. SELECT CIVIL PLEAS. Vol. I., A.D. 1200-1203. Edited, from the Plea Rolls preserved in the Public Record Office, by W. PALEY BAILDON, F.S.A., of Lincoln's Inn, Barrister-at-Law. Crown 4to. Price to non-members, 28s.

A selection from the earliest records of civil litigation. These consist largely of actions relating to land, either directly, as in the various assizes, writs of right and of entry, actions for dower, &c.; or indirectly, as for feudal services, tolls, franchises, rivers, &c. Others do not concern land. The extracts illustrate the gradual evolution of the different forms of action, both real and personal.

- Vol. IV., for 1890. THE COURT BARON: PRECEDENTS OF PLEADING IN MANORIAL AND OTHER LOCAL COURTS. Edited, from MSS. of the 14th and 15th Centuries, by Professor F. W. MAITLAND and W. PALEY BAILDON. Crown 4to. Price to non-members, 28s.

This volume contains four treatises on the business of Manorial and other Local Courts, with precedents; and throws light on the procedure and pleading. To these are added some very interesting extracts from the rolls of the Court of the Bishop of Ely at Littleport in the Fens (principally during the reign of Edward II.).

- Vol. V., for 1891. **THE LEET JURISDICTION IN THE CITY OF NORWICH.** Edited, from the Leet Rolls of the 13th and 14th Centuries in the possession of the Corporation, by the Rev. W. HUDSON, M.A. With Map and Facsimile. Crown 4to. Price to non-members, 28s.

This volume deals with mediæval municipal life ; the municipal development of a chartered borough with leet jurisdiction, the early working of the frankpledge system ; and generally with the judicial, commercial, and social arrangements of one of the largest cities of the kingdom at the close of the 13th century.

- Vol. VI., for 1892. **SELECT PLEAS OF THE COURT OF ADMIRALTY.** Vol. I., A.D. 1390-1404 and A.D. 1527-1545. Edited by REGINALD G. MARSDEN, of the Inner Temple, Barrister-at-Law. With Facsimile of the ancient Seal of the Court of Admiralty. Crown 4to. Price to non-members, 28s.

The business of the High Court of Admiralty was very considerable during the reigns of Henry VIII., of Elizabeth, and of the Stuarts, and played an important part in the development of commercial law. There is in the Records much curious information upon trade, navigation, and shipping, and the claims of the King of England to a lordship over the surrounding seas.

- Vol. VII., for 1893. **THE MIRROR OF JUSTICES.** Edited, from the unique MS. at Corpus Christi College, Cambridge, with a new translation, by W. J. WHITTAKER, M.A. of Trinity College, Cambridge, and Professor F. W. MAITLAND. Crown 4to. Price to non-members, 28s.

The old editions of this curious work of the 13th century are corrupt, and in many places unintelligible.

- Vol. VIII., for 1894. **SELECT PASSAGES FROM BRACTON AND AZO.** Edited by Professor F. W. MAITLAND. Crown 4to. Price to non-members, 28s.

This volume contains those portions of Bracton's work in which he follows Azo, printed in parallel columns with Azo's text. The use made by Bracton of the works of Bernard of Pavia and the canonist Tancred is also illustrated.

- Vol. IX., for 1895. **SELECT CASES FROM THE CORONERS' ROLLS,** A.D. 1265-1413. Edited, from the Rolls preserved in the Public Record Office, by CHARLES GROSS, Ph.D., Professor of History, Harvard University. Crown 4to. Price to non-members, 28s.

The functions of the coroner were more important in this period than in modern times. The volume supplies interesting information on the history of the office of coroner, on the early development of the jury, on the jurisdiction of the Hundred and County Courts, on the collective responsibilities of neighbouring townships, on proof of Englishry, and on the first beginnings of elective representation.

- Vol. X., for 1896. **SELECT CASES IN CHANCERY,** A.D. 1364-1471. Edited, from the Rolls preserved in the Public Record Office, by W. PALEY BAILDON, F.S.A. Crown 4to. Price to non-members, 28s.

These valuable records, of which few have hitherto been printed, throw new light on the connexion of the Chancery with the Council,

and the gradual separation of the two ; on the early jurisdiction of the Chancery, its forms and procedure, and on the development of the principles of Equity.

Vol. XI., for 1897. SELECT PLEAS OF THE COURT OF ADMIRALTY. Vol. II., A.D. 1547-1602. Edited by REGINALD G. MARSDEN, of the Inner Temple, Barrister-at-Law. Crown 4to. Price to non-members, 28s.

This volume is in continuation of Vol. VI., and covers the reigns of Edward VI., Mary, and Elizabeth : the period of the greatest importance of the Admiralty Court, and of its most distinguished judges, Dr. David Lewes and Sir Julius Cæsar. It illustrates the foreign policy of Elizabeth, the Armada, and other matters and documents of general historical interest. The Introduction treats of the Court from the 14th to the 18th century, with references to some State Papers not hitherto printed or calendared.

Vol. XII., for 1898. SELECT CASES IN THE COURT OF REQUESTS, A.D. 1497-1569. Edited, from the Rolls preserved in the Public Record Office, by I. S. LEADAM, of Lincoln's Inn, Barrister-at-Law. Crown 4to. Price to non-members, 28s.

The origin and history of this Court have not hitherto been fully investigated. Established by Henry VII. under the Lord Privy Seal, as a Court of Poor Men's Causes, and developed by Cardinal Wolsey, its valuable records illustrate forcibly the struggle between the Council and the Common Law Courts ; the development of equity procedure and principle outside the Chancery ; the social effect of the dissolution of the monasteries and the raising of rents ; the tenure of land ; the rights of copyholders ; the power of guilds ; and many other matters of legal and social interest. The Introduction covers the whole history of the Court to its gradual extinction under the Commonwealth and Restoration.

Vol. XIII., for 1899. SELECT PLEAS OF THE FORESTS. Edited from the Forest Eyre Rolls and other MSS. in the Public Record Office and British Museum, by G. J. TURNER, M.A., of Lincoln's Inn, Barrister-at-Law. Crown 4to. Price to non-members, 28s.

The Forest Plea Rolls are very interesting and little known. They begin as early as the reign of King John, and consist of perambulations, claims, presentments and other proceedings (such as trials for poaching and trespass in the Forests) before the Justices in Eyre of the Forests. The present volume deals with the administration of the Forests in the 13th century, their judges, officers, courts, procedure, &c. ; the beasts of the forest, chase, and warren ; the hounds and instruments of hunting ; the grievances of the inhabitants, benefit of clergy, and other important matters.

Vol. XIV., for 1900. BEVERLEY TOWN DOCUMENTS. Edited by ARTHUR F. LEACH, Barrister-at-Law, Assistant Charity Commissioner. Crown 4to. Price to non-members, 28s.

These records illustrate the development of Municipal Government in the 14th and 15th centuries ; the communal ownership of land ; the relations between the town and the trade guilds ; and other interesting matters.

- Vol. XV., for 1901. *SELECT PLEAS, STARRS, &c., OF THE JEWISH EXCHEQUER, A.D. 1218-1286.* Edited, from the Rolls in the Public Record Office, by J. M. RIGG, of Lincoln's Inn, Barrister-at-Law. Crown 4to. Price to non-members, 28s.

The Justiciarii Judæorum, who had the status of Barons of the Exchequer, exercised jurisdiction in all affairs between Jews or the Jewish community on the one hand and the Crown or Christians on the other; namely, in accounts of the revenue, in some criminal matters, in pleas upon contracts and torts between Jews and Christians, and in causes or questions touching their land or goods, or their tallages, fines, and forfeitures. This involved a complete registry of deeds or 'starrs.' The Rolls constitute a striking history of the English Jewry for 70 years before their expulsion under Edward I.

- Vol. XVI., for 1902. *SELECT PLEAS OF THE COURT OF STAR CHAMBER. Vol. I.* Edited, from the Records in the Public Record Office, by I. S. LEADAM, of Lincoln's Inn, Barrister-at-Law. Crown 4to. Price to non-members, 28s.

This volume contains a selection from the earliest records of the famous Star Chamber. The hitherto debated origin of that tribunal and its relation to the King's Council are fully discussed in the Introduction. In addition to matters of great importance to students of constitutional history, there is also a large mass of materials illustrative of the social and economic condition of England during the reign of Henry VII., the prevalent turbulence, the state of the towns and of the monasteries, and the like.

- Vol. XVII., for 1903. *YEAR BOOKS SERIES. Vol. I. YEAR BOOKS OF 1 AND 2 EDWARD II. (A.D. 1307-8 and 1308-9).* Edited, from sundry MSS., by Professor F. W. MAITLAND. Crown 4to. Price to non-members, 28s.

An attempt is made to establish by the help of nine manuscripts an intelligible text of these very early law reports, hitherto known only from a very faulty copy of one faulty manuscript. The text is accompanied by a translation and head-notes. Whenever possible, the report of a case has been compared with the corresponding record on the Rolls of the Court of Common Pleas. This volume contains a considerable number of reports never yet published. In the Introduction the Editor discusses the origin of law reports, and supplies an analysis of the Anglo-French language in which the earliest reports were written. This volume is the first of a Year Books Series which the Society hopes to continue in alternate years.

- Vol. XVIII., for 1904. *BOROUGH CUSTOMS. Vol. I.* Edited, from sundry MSS., by Miss MARY BATESON, Fellow of Newnham College, Cambridge. Crown 4to. Price to non-members, 28s.

This work takes the form of a Digest, arranged according to subject-matter, of materials collected from a large number of Boroughs in England, Ireland, and Scotland. It provides an inductive and comparative analysis of the local customary law of the boroughs and ports of Great Britain and Ireland, extending over the whole of the Middle Ages. No systematic attempt of this sort has previously been made in England. A large part of the work is derived from hitherto unpublished sources, and of the residue a great deal has been obtained from books that are not generally accessible or treat only of the affairs of some one town. The first volume deals exhaustively with crime, tort, and procedure. The Introduction discusses

the growth of customary law in the boroughs, and contains a bibliography of customals already published.

- Vol. XIX., for 1904. YEAR BOOKS SERIES. Vol. II. YEAR BOOKS of 2 and 3 EDWARD II. (A.D. 1308-9 and 1309-10). Edited, from sundry MSS., by Professor F. W. MAITLAND. Crown 4to. Price to non-members, 28s.

This continues the work of Vol. I. The mass of unpublished material discovered continues to increase, and gives to these volumes an interest even beyond what was contemplated at their first inception. In many instances the publication of two or even three reports of the same case, together with a full note of the pleadings recorded on the roll of the Court, will enable the reader to comprehend in a manner that has hitherto been impossible the exact nature of the points of law discussed and decided.

- Vol. XX., for 1905. YEAR BOOKS SERIES. Vol. III. YEAR BOOKS of EDWARD II. (A.D. 1309-10). Edited, from sundry MSS., by Professor F. W. MAITLAND. Crown 4to. Price to non-members, 28s.

This is a continuation of Vols. I. and II. of this Series. It contains an interesting dissertation on the existing manuscripts of these Year Books : a comparison of the reports of the same cases in different manuscripts, and a discussion of their history, paternity, and reliability, with other interesting matters relating to the Year Books and the reported cases.

- Vol. XXI., for 1906. BOROUGH CUSTOMS. Vol. II. Edited, from sundry MSS., by Miss MARY BATESON, Fellow of Newnham College, Cambridge. Crown 4to. Price to non-members, 28s.

This volume completes the masterly digest of the Borough Customs begun in Vol. XVIII. by the same Editor. The Introduction contains an analysis of the primitive laws embodied in the Local Customals, traces their sources both in procedure and substantive law, and compares them with the development of the Common Law. The second volume deals with contract, succession, land, alienation and devise of land, husband and wife, infants, dower, the Borough Courts and their officers, process and execution, and many other subjects.

- Vol. XXII., for 1907. YEAR BOOKS SERIES. Vol. IV. YEAR BOOKS of EDWARD II. (A.D. 1310). Edited, from sundry MSS., by the late Professor F. W. MAITLAND and G. J. TURNER, M.A., of Lincoln's Inn, Barrister-at-Law. Crown 4to. Price to non-members, 28s.

This is a continuation of Vol. III., and concludes the reports for the year 1310. The text and translation were left nearly complete and once revised by Professor Maitland at his death. Mr. Turner has added a considerable number of additional notes from the records, most of which are collected in an Appendix, while some are embodied in the later portions of the text. He has also written an Introduction on the Courts and Judges of the period, with comments on some of the important cases reported in the volume.

- Vol. XXIII., for 1908. SELECT CASES CONCERNING THE LAW MERCHANT. Vol. I. LOCAL COURTS. Edited, from sundry MSS. by Professor CHARLES GROSS, Ph.D., Professor of History, Harvard University. Crown 4to. Price to non-members, 28s.

This volume illustrates the administration of the Law Merchant from the 13th century onwards in the Local Courts established for the execution of speedy justice between merchants, such as Fair Courts, Borough Courts, Staple Courts. The records of these Courts have proved to be very

plentiful and enlightening. As no such mediæval records are known to exist on the Continent, the English documents are very important, and no attempt has hitherto been made to digest and compare them. The Fair Court of St. Ives has been chosen as the principal type; but the records of other Courts at Carnarvon, Bristol, Leicester, Norwich, Exeter, the Cinque Ports and elsewhere have also been utilised. The Introduction deals with the history of all such Courts and of their records, and contains interesting appendices. Another volume will deal with the Law Merchant in the King's Courts at Westminster, and with the history of the subject generally.

-
- Vol. XXIV., for 1909. YEAR BOOKS SERIES. Vol. V. THE EYRE OF KENT of 6 and 7 EDWARD II. (A.D. 1313-4), Vol. I. Edited, from sundry MSS., by the late Professor MAITLAND, the late L. W. VERNON HARCOURT, of Gray's Inn, Barrister-at-Law, and W. C. BOLLAND, of Lincoln's Inn and the North-Eastern Circuit, Barrister-at-Law. Crown 4to. Price to non-members, 28s.

This is the first complete report in detail of the work of the Itinerant Justices commissioned to 'hold all pleas' touching the county visited on the Eyre. The text has been laboriously compiled from the collation of 18 MSS., mostly independent and all more or less corrupt. The present volume contains an account of the Commissions, the Articles of the Eyre, the preliminary proceedings, the Pleas of the Crown, and some actions of attaint and trespass. It throws new light on the whole procedure, and in particular on the financial purposes of the Eyre and the growth of the Jury System. The Introduction treats of all these matters and also incidentally of other interesting subjects, such as the history of coroners, abjuration of the realm, privilege of clergy, deodands, a subsidiary Eyre for the liberty of Wye, the trades and callings exercised at the period, the topography of Canterbury, and an interesting philological note on the obscure term 'busones,' &c. An appendix contains the names of all the bailiffs and jurors attending the Eyre.

-
- Vol. XXV., for 1910. SELECT PLEAS OF THE COURT OF STAR CHAMBER. Vol. II. Edited, from the Records in the Public Record Office, by I. S. LEADAM, of Lincoln's Inn, Barrister-at-Law. Crown 4to. Price to non-members, 28s.

This is a continuation of Vol. XVI., and contains a selection of interesting records during the reign of Henry VIII. These are largely concerned with matters of great historical and economical importance—*e.g.* the State policy of the period in fixing prices for commodities and in controlling or forbidding exports; the relations between the monastic houses and their agricultural tenants or commercial communities; rights of pasture and enclosure of common lands; the conflicting interests of the artisan and trading classes; the organisation of municipalities, and in particular Newcastle and Bristol; manorial tenures and the position of villeins. All of these matters are further illustrated in a full Introduction, which also deals with the development of (1) the constitution, and (2) the process of the Court of Star Chamber.

-
- Vol. XXVI., for 1911. YEAR BOOKS SERIES. Vol. VI. YEAR BOOKS of 4 EDWARD II. (A.D. 1310-11). Edited, from sundry MSS., by G. J. TURNER, M.A., of Lincoln's Inn, Barrister-at-Law. Crown 4to. Price to non-members, 28s.

This is a continuation of Vol. IV. of this series, and contains the

reports for Michaelmas, Hilary, and Easter terms of 4 Edward II. Two new and valuable manuscripts have come to light since the publication of Vol. IV. of this series, and have been used in editing this volume. The introduction contains a dissertation on the origin of the Year Books ; a brief history of the manuscripts and detailed particulars of a portion of their contents which are intended to enable the reader to see how they are related to one another. It also contains the hitherto unnoticed letters patent by which James I. appointed official law reporters and the entries on the Issue Rolls of the payments made to them.

-
- Vol. XXVII., for 1912. YEAR BOOKS SERIES. Vol. VII. THE EYRE OF KENT of 6 and 7 EDWARD II. (A.D. 1313-4), Vol. II. Edited, from sundry MSS., by W. C. BOLLAND, of Lincoln's Inn and the North-Eastern Circuit, Barrister-at-law, the late F. W. MAITLAND, and the late L. W. VERNON HARCOURT. With facsimile of a specimen of MS. Crown 4to. Price to non-members, 28s.

This is a continuation of Vol. XXIV., comprising the civil pleas arranged in alphabetical order from Account to Mesne. The Introduction discusses many of these cases. It also treats of a remarkable procedure by Bills in Eyre, not hitherto observed, adapted to the prompt disposal of the suits of poor persons ; makes a further contribution to the vexed question of the authorship of the Year Books, criticising Mr. Pike's theory ; and concludes with a reprint, translation, and criticism of a 13th-century treatise on Mediæval French orthography found in Lincoln's Inn Library. A frontispiece reproduces in collotype a facsimile of a portion of one MS. of this Year Book, containing a specially obscure passage, by way of illustration of the materials used.

-
- Vol. XXVIII., for 1913. SELECT CHARTERS OF TRADING COMPANIES. Edited, from the Patent Rolls in the Public Record Office, by CECIL T. CARR, of the Inner Temple and Western Circuit, Barrister-at-Law. Crown 4to. Price to non-members, 28s.

This volume contains forty-one grants to companies, ranging in date from 1530 to 1707. They include incorporations of merchants trading abroad, of companies for plantation, mining, fishing, insurance, and water supply, and for the manufacture of starch, soap, salt, saltpetre, paper, linen, tapestry, and silk. The Introduction treats of the career of these companies, and incidentally of other historically interesting companies formed during this period, and discusses the general development of trading companies, as joint-stock undertakings, from the guilds and merchant venturers of earlier times.

-
- Vol. XXIX., for 1913. YEAR BOOKS SERIES. Vol. VIII. THE EYRE OF KENT of 6 and 7 EDWARD II. (A.D. 1313-14), Vol. III. Edited from sundry MSS., by W. C. BOLLAND, of Lincoln's Inn and the North-Eastern Circuit, Barrister-at-law. Crown 4to. Price to non-members, 28s.

This is a continuation of Vol. XXVII., comprising the remainder of the civil pleas in alphabetical order, and a collection of notes dealing with miscellaneous matters. The Introduction discusses many of the reported cases, and gives some account of the mediæval procedure under writs of *quo warranto*. It also treats of the long-forgotten assize of Fresh Force, of the salaries of the Justices and the fees of their Clerks, and of several minor matters of legal, historical, philological and social interest.

Vol. XXX., for 1914. SELECT BILLS IN EYRE, A.D. 1292-1333. Edited from the Records in the Public Record Office by W. C. BOLLAND, of Lincoln's Inn and the North-Eastern Circuit, Barrister-at-Law. Crown 4to. Price to non-members, 28s.

This volume contains 157 bills presented in the Eyres of Lincolnshire (14 Edward I.), Shropshire (20 Edward I.), Staffordshire (21 Edward I.), and Derbyshire (4 Edward III.), and also 18 other bills of similar form presented to two Special Commissions sitting respectively in the Channel Islands in 2 Edward II. to deal with various complaints of oppression and other wrongs made by the Islanders to the King, and in Berwick-upon-Tweed in 7 Edward III. to determine the right to lands which had been seized by Robert Bruce and granted by him to his supporters, and of which the King of England had taken possession after the battle of Halidon Hill. The endorsements on the bills and the existing subsidiary documents connected with them, as well as the relevant records in the Eyre and other rolls, are also given in full. These bills contain many interesting details of provincial life and manners in the thirteenth and fourteenth centuries. From one of them we learn that a branch of the Chancery, whence writs were obtainable, was temporarily established in a county wherein an Eyre was sitting or was about to sit. Another one seems to reveal the existence of an organised law school in London, with the power of calling to the bar, of a much earlier date than any of which we have previously had knowledge. The Introduction deals with the presentation, language, and contents of the bills, and with the meaning of the endorsements, some of which present points of much difficulty, and discusses the authority and jurisdiction of the Eyre and the various legal, historical, social, philological and critical questions which arise out of a consideration of the bills contained in the volume.

Vol. XXXI., for 1915. YEAR BOOK SERIES. Vol. XI. YEAR BOOKS OF 5 EDWARD II. (A.D. 1311-1312). Edited from sundry manuscripts by W. C. BOLLAND, of Lincoln's Inn and the North-Eastern Circuit, Barrister-at-Law. Crown 4to. Price to non-members, 28s.

This volume includes reports of cases heard in the Hilary and Easter terms of 5 Edward II. The Introduction discusses some of the more important points raised in the course of the arguments. Of these the most important, as well as the most interesting, is the effect of the Statute *de donis*. This statute, according to Bereford C.J., restrained alienation until the third in descent from the original feoffee had acquired seisin, that is to say up to the fourth degree; while it was argued by some of the Serjeants that the original feoffee alone was restrained. It does not appear to have been even suggested that the statute was in permanent restraint of alienation, as has now for some centuries been generally held and taught. The Introduction discusses also the variances between the Roll of the Court and the reports, and even amongst the reports themselves, as to the terms in which individual cases were heard; as well as some other matters, including various legal, historical and philological questions arising out of the reports.

Vol. XXXII. PUBLIC WORKS IN MEDIÆVAL LAW. Vol. I. Edited from the Records in the Public Record Office by CYRIL FLOWER, of the Inner Temple and the Public Record Office, Barrister-at-Law. Crown 4to. Price to non-members, 28s. [In the Press.]

The Volumes in course of preparation are:

Vols. . YEAR BOOKS SERIES. Vols. IX., X. YEAR BOOKS OF EDWARD II. By G. J. TURNER and Professor GELDART. Further YEAR BOOKS OF EDWARD II. By W. C. BOLLAND, and also by Professor VINOGRADOFF.

Vol. . THE LAW MERCHANT. Vol. II. By WILFRID HOOPER and the late Professor CHARLES GROSS. This volume will deal with the Law Merchant in the King's Courts.

Vol. . SELECT PLEAS IN ECCLESIASTICAL COURTS. By HAROLD D. HAZELTINE and HILARY JENKINSON.

Vol. . THE 'LIBER PAUPERUM' OF VACARIUS. By F. DE ZULUETA, Fellow of New College, Oxford.

Vol. . SELECT CASES BEFORE THE COUNCIL. By Professor J. F. BALDWIN.

Vol. . SELECT CASES IN THE EXCHEQUER OF PLEAS. By HILARY JENKINSON.

Vol. . SELECT ENTRIES FROM THE COURT BOOK OF CHARTERED COMPANIES. By C. T. CARR.

Vol. . PUBLIC WORKS IN MEDIÆVAL LAW. Vol. II. By CYRIL FLOWER.

LIST OF MEMBERS.

1915.

(* denotes *Life Members*; † *Members of the Council*; ‡ *Honorary Members.*)

UNITED KINGDOM.

†ADDY, Sidney O.	3 Westbourne Road, Sheffield.
ALEXANDER, G. Glover	Keir House, Barnsley, Yorks.
ALSOP, J. W.	Ulverscroft, 25 Bidston Road, Birkenhead.
ALVERSTONE, The Right Hon. Viscount,	Winterfold, Cranleigh, Surrey.
†BAILDON, W. Paley	5 Stone Buildings, Lincoln's Inn, W.C.
BARRY, Wm. F.	10 King's Bench Walk, Temple, E.C.
BAYLEY, K. C.	The College, Durham.
BIRD, Ernest E.	5 Gray's Inn Square, W.C.
BOLLAND, W. C.	5 Essex Court, Temple, E.C.
BOND, Henry	Trinity Hall, Cambridge.
BROWN, H. F., LL.B.	Crypt Chambers, Eastgate Row, Chester.
BURROWS, R.	1 Brick Court, Temple, E.C.
BUSHE-FOX, L. H. K.	St. John's College, Cambridge.
CARPENTER, R. H.	Bank Chambers, Corn Street, Bristol.
CARTMELL, J. Austen	6 New Square, Lincoln's Inn, W.C.
CARR, Cecil T.	2 Mitre Court Buildings, Temple, E.C.
CARTER, A. T.	Christ Church, Oxford.
CHANDLER, Pretor W.	Royal Courts of Justice, W.C. (Room 689).
CHANNELL, The Right Hon. Sir Arthur M.	Thorncombe, Crowcombe, Taunton.
CHARLES, The Right Hon. Sir A.	Woodlands, Sevenoaks, Kent.
CLARK, J. W., K.C.	Highcroft, Winchmore Hill, N.
COHEN, Herman	3 Elm Court, Temple, E.C.
COHEN, The Right Hon. A., K.C.	26 Great Cumberland Place, W.
*CONNAUGHT, H.R.H. The Duke of	Clarence House, St. James's, S.W.
COOK, Sir Charles, K.C.B.	Sullingstead, Hascombe, Godalming.
COOLIDGE, Rev. W. A. B.	c/o Parker & Son, 27 Broad St., Oxford.
COZENS-HARDY, The Right Hon. Lord, M.R.	Royal Courts of Justice, W.C.
CRACROFT, R. W.	2 King's Bench Walk, Temple, E.C.
CROSS, W. C. H.	Bank Chambers, Corn Street, Bristol.
CUNLIFFE, J. Herbert, K.C.	6 New Court, Carey Street, W.C.
CURTIS, T. S.	4 Bedford Row, W.C.
DARLING, The Hon. Mr. Justice	18 Prince's Gardens, S.W.
DE GRUCHY, W. L.	12 Highbury Mansions, N.
DU CANE, Louis	46 Parliament Street, S.W.
ELPHINSTONE, Sir Howard W., Bart.	Struan, Augustus Road, Wimbledon Park, S.W.
ESTILL, John	Malton, Yorks.
EVILL, W. A.	33 Hillfield Road, West Hampstead, N.W.

- FARRER, H. L. 66 Lincoln's Inn Fields, W.C.
 FARWELL, The late Right Hon. Sir 15 Southwell Gardens, S.W.
 George, Executors of
 FINLAY, The Right Hon. Sir R. B., 4 Temple Gardens, Temple, E.C.
 G.C.M.G.
 FISHER, H. A. L. New College, Oxford.
 FISK, Ernest 26 Museum Street, Ipswich.
 FLADGATE, W. F. 18 Pall Mall, S.W.
 FORD, J. Rawlinson Yealand Conyers, Carnforth.
 FOSTER, Canon C. W. Timberland Vicarage, Lincoln.
 †FRESHFIELD, Dr. Edwin New Bank Buildings, 31 Old Jewry, E.C.
 FRY, The Right Hon. Sir E. Failand House, Failand, near Bristol.
- GELDART, W. M. 10 Chadlington Road, Oxford.
 *GIFFARD, Sir Henry A., K.C. Braye du Valle, Guernsey.
 GLADSTONE, Robert, Jun. Woolton Vale, Liverpool.
 GOODGER, C. W. S. 18 Market Street, Newcastle-on-Tyne.
 GORE, John F. 46 Egerton Gardens, S.W.
 GRAY, W. H. Ormond House, 63 Queen Victoria St., E.C.
 GREENWOOD, R. H. Bankfield, Kendal.
 GREGORY, Sir P. S. 1 New Square, Lincoln's Inn, W.C.
- †HALDANE, The Rt. Hon. Viscount, K.T. 28 Queen Anne's Gate, S.W.
 HALL, Hubert Public Record Office, Chancery Lane, W.C.
 HALLIDAY, J. Chicklade House, near Salisbury.
 HARDING, George 64 Great Russell Street, W.C.
 HARRIS, Charles B. Sittingbourne, Kent.
 HAZELTINE, Harold D. Emmanuel College, Cambridge.
 †HEALEY, Sir C. Chadwyck, K.C.B., K.C. Wyphurst, Cranleigh, Surrey.
 HILL, Sir A. Norman Leighton House, Neston, Cheshire.
 HIND, J. Edwalton, Nottingham.
 HOLLOND, H. A. Trinity College, Cambridge.
 HOUGHTON, Boydell 1 Temple Gardens, E.C.
 HUDSON, Rev. W. 10 Cloraine Gardens, W. Hampstead, N.W.
 HUMFRYS, W. J. Hereford.
 HURST, Gilbert H. J. 4 Stone Buildings, Lincoln's Inn, W.C.
- INGLE, W. Brouncker 4 Orchard Road, Blackheath, S.E.
 INGLEDEW, A. M. 4 Mount Stuart Square, Cardiff.
- JELF, Sir A. R. Oak House, Putney, S.W.
 JESSEL, A. H., K.C. 5 New Square, Lincoln's Inn, W.C.
 †JOHNSON, Sir Henry James 101 Leadenhall Street, E.C.
 JONES, W. E. Tyldesley 5 Stone Buildings, Lincoln's Inn, W.C.
 †JOYCE, The Hon. Mr. Justice Royal Courts of Justice, W.C.
- †KENNY, Prof. Courtney Downing College, Cambridge.
 KING, H. C. 17 Serjeants' Inn, Fleet Street, E.C.
 KING, W. G. 12 Essex Street, Strand, W.C.
 KNEALE, Llewellyn S. Woodbourne Place, Douglas, Isle of Man.

LAWRENCE, P. O., K.C.

LEWIS, Frank B.

LEWIS, George

LINDLEY, The Right Hon. Lord

LINDSAY, W. A., K.C.

LISTER, J.

†LOCK, His Honour Judge Fossett

LYTE, Sir H. C. Maxwell, K.C.B.

MACNAGHTEN, The Hon. M. M.

MACKENZIE, W.

MARSDEN, R. G.

MARTELLI, E. W., K.C.

MATTHEWS, J. B., K.C.

MEARS, T. L., LL.D.

†MOORE, H. Stuart

MORGAN, Prof. J. H.

MOSS, W.

†MOULTON, The Rt. Hon. Lord

NASH, E.

NEILSON, G., LL.D.

†*NORTON, R. F., K.C.

NUTTALL, T. K.

O'CONNOR, His Honour Judge, K.C.

PARKER, G. Phillips

†PARKER, of Waddington, The Rt. Hon.

Lord

PETER, Thurstan

PETTITT, D. H.

PICKERING, J. E. L. (Librarian)

PIERCY, C. CARLTON

PIKE, L. Owen

POLAND, Sir Harry, K.C.

†POLLOCK, Right Hon. Sir F., Bart.

POORE, Major R.

PRIEST, F. J.

PROTHERO, G. W.

RADFORD, G. H., M.P.

RANDALL, Henry J.

RANKIN, G. C.

RAWLE, Thomas

†RENSHAW, Walter C., K.C.

RHYMER, E. T.

†RIDER, J. E. W.

RIDLEY, The Hon. Mr. Justice

RIGG, J. M.

†ROMER, The Right Hon. Sir Robert,
G.C.B.

ROWLATT, The Hon. Mr. Justice

6 New Court, Lincoln's Inn, W.C.

11 Old Jewry Chambers, E.C.

"Wedgeborough," Holly Park Gardens,
Finchley, N.

East Carleton, Norwich.

College of Arms, Queen Victoria St., E.C.

Shelden Hall, near Halifax.

The Toft, Bridlington, Yorkshire.

Public Record Office, Chancery Lane, W.C.

27 Campden House Court, Kensington, W.

9 King's Bench Walk, Temple, E.C.

13 Leinster Gardens, W.

4 New Square, Lincoln's Inn, W.C.

2 Paper Buildings, Temple, E.C.

9 King's Bench Walk, Temple, E.C.

6 King's Bench Walk, Temple, E.C.

1 Mitre Court Buildings, Temple, E.C.

Eldon Chambs., Wheeler Gate, Nottingham.

57 Onslow Square, S.W.

37 Sussex Gardens, Hyde Park, W.

Wellfield, Partickhill, Glasgow.

36 Inverness Terrace, Paddington, W.

8 Harrington Street, Liverpool.

Dunsdale, Poole Road, Bournemouth.

3 Ormonde Terrace, Regent's Park, N.W.

3 Buckingham Gate, S.W.

Redruth, Cornwall.

27 Chancery Lane, W.C.

Inner Temple Library, E.C.

Aldrington House, Hove.

10 Chester Terrace, Regent's Park, N.W.

28 Sloane Gardens, S.W.

13 Old Square, Lincoln's Inn, W.C.

17 Rosemount Road, Bournemouth.

35 South John Street, Liverpool.

24 Bedford Square, W.C.

27 Chancery Lane, W.C.

Highmead, Bridgend, Glam.

2 Mitre Court Buildings, Temple, E.C.

1 Bedford Row, W.C.

Sandrocks, Hayward's Heath, Sussex.

191 Fore Street, Upper Edmonton, N.

8 New Square, Lincoln's Inn, W.C.

48 Lennox Gardens, S.W.

79 Brixton Hill, S.W.

21 Queen's Gate Gardens, S.W.

Royal Courts of Justice, W.C.

- SALTER, Rev. H. E.
 SAMSON, C. L.
 SAVILL, Harry
 SOLOMON, Robert B.
 STAMP, A. E.
 STEPHEN, A. L.
 STEPHENS, H. C.
 STIRLING, The Right Hon. Sir James
 STUART, G.
 SWEET, Charles
- TAYLOR, R. S.
 THIRLBY, Edwin Harris
- TROWER, Sir W.
 TUCKER, John
 TURNER, G. J.
 TURTON, R. B.
- †VINOGRADOFF, Professor
- *WALKER, J. Douglas, K.C.
 WALLIS, J. P.
 WALTERS, W. Melmoth
 †WARRINGTON, The Right Hon. Lord Justice
 WATSON, E. J.
 *WELBY, Edward M. E.
 WHEATLEY, R. A.
 WHEELER, Geo. A.
 WHEELER, G. G.
 WHITE, J. Bell
 WHITTUCK, E. A.
 WIGHTMAN, A.
 WILLIAMS, Jer. Fisch
 WILLIAMS, Romer
 †WILLIAMS, T. Cyprian
 WILLIAMS, T. W.
 WILLIAMS, The Rt. Hon. Sir Roland Vaughan
 †WOOD, James G.
 WOODS, J. C.
 WOODS, M. S. Grosvenor, K.C.
 WRENBURY, The Right Hon. Lord
- Manor House, Dry Sandford, Abingdon.
 23 Lancaster Gate, W.
 12 Fenchurch Avenue, E.C.
 84 Iverna Court, Kensington, W.
 Public Record Office, Chancery Lane, W.C.
 38 Brunswick Square, W.
 Avenue House, Finchley, N.
 Finchcocks, Goudhurst, Kent.
 Jesmond, Rosemary Avenue, Finchley, N.
 10 Old Square, Lincoln's Inn, W.C.
- 4 Field Court, Gray's Inn, W.C.
 Holly Close, St. Albans Road, Hatfield, Herts.
 5 New Square, Lincoln's Inn, W.C.
 Priory Mount, Hastings.
 5 Clement's Inn, Strand, W.C.
 Kildale Hall, Grosmont, Yorks.
- Court Place, Iffley, Oxford.
- 20 Queen's Gate Gardens, S.W.
 Royal Courts of Justice, Madras.
 Ewell, Surrey.
 Royal Courts of Justice, W.C.
- 12 John Street, Bristol.
 Norton House, Norton, Sheffield.
 9 Spring Gardens, Haverfordwest, Pem.
 13 Clifton Road, Southall, Middlesex.
 St. Ives, Hunts.
 Alderbourne Manor, Gerrard's Cross, Bucks.
 Claverton Manor, Bath.
 14 George Street, Sheffield.
 7 New Square, Lincoln's Inn, W.C.
 Norfolk House, Norfolk St., Strand, W.C.
 7 Stone Buildings, Lincoln's Inn, W.C.
 Bank Chambers, Corn Street, Bristol.
 6 Trebovir Road, Earl's Court, S.W.
- 7 New Square, Lincoln's Inn, W.C.
 Hillside, Swansea.
 29 Arlington Road, Eastbourne.
- 16 Old Square, Lincoln's Inn, W.C.

SOCIETIES, LIBRARIES, &c.

BIRMINGHAM :

BIRMINGHAM FREE LIBRARIES
 BIRMINGHAM LAW SOCIETY

Ratcliff Place.
 Wellington Passage, Bennett's Hill.

CAMBRIDGE :

DOWNING COLLEGE
 NEWNHAM COLLEGE
 *SQUIRE LAW LIBRARY
 ST. JOHN'S COLLEGE LIBRARY
 TRINITY COLLEGE
 TRINITY HALL

CROYDON :

PUBLIC LIBRARIES

DUBLIN :

KING'S INNS' LIBRARY
 NATIONAL LIBRARY OF IRELAND c/o Hodges, Figgis & Co., 104 Grafton St.

EDINBURGH :

SOCIETY OF SOLICITORS in the S.S.C. Library, Parliament House.
 Supreme Courts of Scotland
 THE SIGNET LIBRARY
 UNIVERSITY LIBRARY c/o J. Thin, Esq., 54 & 55 South Bridge.

GLASGOW :

FACULTY OF PROCURATORS 62 St. George's Place.
 MITCHELL LIBRARY North Street.
 UNIVERSITY LIBRARY c/o Messrs. MacLehose & Sons, 61 St.
 Vincent Street.

HULL :

PUBLIC LIBRARIES Albion Street.

LEEDS :

PUBLIC LIBRARY Municipal Buildings.
 THE LEEDS LIBRARY Commercial Street.

LIVERPOOL

FREE PUBLIC LIBRARIES William Brown Street.
 INCORPORATED LAW SOCIETY 10 Cook Street.
 UNIVERSITY LIBRARY

LONDON :

BAR LIBRARY Royal Courts of Justice, W.C.
 BEDFORD COLLEGE FOR WOMEN York Gate, Regent's Park, N.W.
 BISHOPSGATE INSTITUTE Bishopsgate, E.C.
 GRAY'S INN
 GUILDHALL LIBRARY Guildhall, E.C.
 HOLBORN PUBLIC LIBRARY High Holborn, W.C.
 HOUSE OF COMMONS LIBRARY c/o Wyman & Son, Ltd., Fetter Lane, E.C.
 HOUSE OF LORDS LIBRARY c/o Wyman & Son, Ltd., Fetter Lane, E.C.
 INNER TEMPLE
 LINCOLN'S INN
 LONDON LIBRARY 14 St. James's Square, S.W.
 LONDON SCHOOL OF ECONOMICS Clare Market, W.C.
 MIDDLE TEMPLE
 OXFORD AND CAMBRIDGE CLUB c/o Harrison & Sons, 59 Pall Mall, S.W.
 PUBLIC RECORD OFFICE c/o Wyman & Son, Ltd., Fetter Lane, E.C.
 REFORM CLUB Pall Mall, S.W.
 SION COLLEGE Victoria Embankment, E.C.
 SOCIETY OF ANTIQUARIES Burlington House, W.
 THE LAW SOCIETY Chancery Lane, W.C.

LONDON—*cont.*

UNIVERSITY COLLEGE LIBRARY	c/o H. K. Lewis, 136 Gower Street, W.C.
UNIVERSITY OF LONDON	South Kensington, S.W.

MANCHESTER :

FREE REFERENCE LIBRARY	2 King Street.
JOHN RYLANDS LIBRARY	
MANCHESTER LAW LIBRARY	Kennedy Street.
VICTORIA UNIVERSITY	c/o J. E. Cornish, Ltd., 16 St. Ann's Square.

NEWCASTLE-ON-TYNE :

LITERARY AND PHILOSOPHICAL SOCIETY	
PUBLIC LIBRARY	New Bridge Street.

NOTTINGHAM :

THE NOTTINGHAM INCORPORATED	South Parade.
LAW SOCIETY	

OXFORD :

ALL SOULS' COLLEGE	
MAITLAND LIBRARY	All Souls' College.
MERTON COLLEGE	
NEW COLLEGE LIBRARY	
*ST. JOHN'S COLLEGE	
SOMERVILLE COLLEGE	
TRINITY COLLEGE	c/o Parker & Son, 27 Broad St., Oxford.
UNION SOCIETY	

SHEFFIELD :

PUBLIC LIBRARY	
----------------	--

WINDSOR :

ROYAL LIBRARY	Windsor Castle, Berks.
---------------	------------------------

COLONIAL AND FOREIGN.

DENMARK :

ROYAL LIBRARY, Copenhagen	c/o Dawson & Sons, Ltd., St. Dunstan's House, Fetter Lane, E.C.
---------------------------	---

DOMINION OF CANADA :

CHRYSLER, F. H., K.C.	34 Central Chambers, Ottawa.
LAW SOCIETY OF UPPER CANADA	c/o Stevens & Haynes, 13 Bell Yard, W.C.
LIBRARY OF PARLIAMENT, Ottawa	c/o E. G. Allen & Son, 14 Grape Street, Shaftesbury Avenue, W.C.
THE SUPREME COURT, Ottawa	c/o Stevens & Haynes, 13 Bell Yard, W.C.

FRANCE :

TARDIFF, E. T.	8 Cité Vaneau, Paris.
BIBLIOTHÈQUE NATIONALE	Paris } c/o Simpkin, Marshall & Co.,
„ DE LA FACULTÉ DE DROIT	Paris / 2 Orange Street, Haymarket, S.W.
„ DE L'UNIVERSITÉ	c/o Picard et Fils, 82 Rue Bonaparte, Paris.
„ DE L'UNIVERSITÉ DE LYON	c/o Henri Georg, Passage de l'Hôtel-Dieu, Lyons.

INDIA :

MUKHOPADHYAY, The Hon. Asutosh (Calcutta)	} c/o B. Quaritch, 11 Grafton Street, New Bond Street, W.
UNIVERSITY OF CALCUTTA	

NEW SOUTH WALES :

DEPARTMENT OF ATTORNEY-GENERAL c/o Agent-General, 123, 125, Cannon
AND JUSTICE Street, E.C.

*GRIFFITH, The Right Hon. Sir Samuel High Court of Australia, Sydney.

NEW ZEALAND :

GARROW, J. M. E., B.A.

Victoria College, Wellington.

OTAGO LAW SOCIETY

Dunedin, N.Z.

TARANAKI DISTRICT LAW SOCIETY

c/o Stevens & Haynes, 13 Bell Yard, W.C.

UNIVERSITY OF OTAGO

c/o Messrs. Otto Schulze & Co., 20 South
Frederick Street, Edinburgh.

WILLIAMS, Justice, Sir J. S.

Supreme Court, Dunedin.

SOUTH AFRICA :

MACDONELL, P. J.

Livingstone, Northern Rhodesia.

SOUTH AUSTRALIA :

UNIVERSITY OF ADELAIDE

c/o W. Muller, 69a Great Queen Street,
W.C.

WAY, The Right Hon. Sir Samuel

Chief Justices' Chambers, Adelaide.

SWITZERLAND :

UNIVERSITÄTS-BIBLIOTHEK (Basel)

VICTORIA :

MELBOURNE PUBLIC LIBRARY

The Agent-General for Victoria, Mel-
bourne House, Strand, W.C.

UNITED STATES OF AMERICA :

CALIFORNIA :

CALIFORNIA UNIVERSITY LIBY.

c/o Messrs. Stevens & Brown, 4 Trafalgar
Square, W.C.

STANFORD, LELAND

University of California.

SAN FRANCISCO LAW LIBRARY

COLORADO :

HUGHES, Charles J., Junior

Rooms 4-12, Hughes Block, 16th and
Stout Streets, Denver.

DISTRICT OF COLUMBIA :

HOLMES, Hon. O. W.

Supreme Court of the United States,
Washington.

LIBRARY OF CONGRESS

c/o E. G. Allen & Son, 14 Grape Street,
Shaftesbury Avenue, W.C.

CONNECTICUT :

CONNECTICUT STATE LIBRARY

Hartford.

*YALE UNIVERSITY

ILLINOIS :

ENGLISH, Lee F.

1011 Railway Exchange, Chicago.

LA BLAY

c/o Geo. Harding, 64 Great Russell
Square, W.C.

NEWBERRY LIBRARY, Chicago

c/o B. F. Stevens & Brown, 4 Trafalgar
Square, W.C.

THE LAW INSTITUTE, Chicago

c/o Stevens & Haynes, 13 Bell Yard, W.C.

UNIVERSITY OF ILLINOIS,

c/o G. E. Stechert & Co., 2 Star Yard,
Carey Street, W.C.

Urbana

ILLINOIS—*cont.*

- UNIVERSITY LIBRARY, Chicago c/o B. F. Stevens & Brown, 4 Trafalgar Square, W.C.
 NORTH-WESTERN UNIVERSITY 31 West Lake Street, Chicago.
 SCHOOL OF LAW
 ILLINOIS SUPREME COURT Springfield.

IOWA :

- IOWA STATE UNIVERSITY LAW Iowa City
 LIBRARY
 IOWA STATE LIBRARY Des Moines.

KANSAS :

- KANSAS STATE LIBRARY Topeka.

KENTUCKY :

- FIELD, Wm. H. Court House, Louisville.

MARYLAND

- WATERS, J. Seymour T. 222 St. Paul Street, Baltimore.
 THE BALTIMORE BAR LIBRARY Baltimore.
 JOHNS HOPKINS UNIVERSITY Baltimore.

MASSACHUSETTS :

- *ABBOT, E. H. 14 Beacon Street, Boston.
 ADAMS, Walter S. Framingham.
 BEALE, Professor J. H. 13 Chauncey Street, Cambridge.
 BRANDEIS, Louis D. 161 Devonshire Street, Boston.
 FISH, Frederick P. 84 State Street, Boston.
 GRAY, Professor J. C. 60 State Street, Boston.
 HALE, Richard W. 16 Central Street, Boston.
 HILL, A. D. Room 1033, 53 State Street, Boston.
 LEVERETT, George V. 53 Devonshire Street, Boston.
 NELSON, N. Mt. Holyoke College, South Hadley.
 PUTNAM, Miss Bertha H. Mt. Holyoke College, South Hadley.
 SCHOFIELD, Wm. 136 Summer Street, Malden.
 THAYER, Ezra R. 53 State Street, Boston.
 BOSTON UNIVERSITY LAW Ashburton Place, Boston.
 SCHOOL
 BOSTON PUBLIC LIBRARY c/o B. Quaritch, 11 Grafton Street, W.
 BOSTON ATHENÆUM
 HARVARD COLLEGE LIBRARY } c/o E. G. Allen & Son, Ltd., 14 Grape
 SMITH COLLEGE LIBRARY } Street, Shaftesbury Avenue, W.C.
 *HARVARD UNIVERSITY LAW Cambridge.
 SCHOOL
 MOUNT HOLYOKE COLLEGE South Hadley.
 LIBRARY
 SOCIAL LAW LIBRARY Court House, Boston.
 WORCESTER COUNTY LAW c/o G. E. Stechert & Co., 2 Star Yard,
 LIBRARY Carey Street, W.C.
 McILWAIN, C. H. 13 Hilliard Street, Cambridge.
 MASSACHUSETTS HISTORICAL 1154 Boylston Street, Boston.
 SOCIETY.

MICHIGAN :

- MICHIGAN UNIVERSITY LAW Ann Arbor.
 LIBRARY

MINNESOTA :

LIBRARY OF UNIVERSITY OF MINNESOTA, MINNEAPOLIS	c/o G. E. Stechert & Co., 2 Star Yard, Carey Street, W.C.
MINNEAPOLIS BAR ASSOC.	Temple Court, Minneapolis.
MINNESOTA STATE LIBRARY	St. Paul.

MISSOURI :

MISSOURI LAW SCHOOL	Columbia, c/o Stechert & Co., 2 Star Yard, Carey Street, W.C.
SALE, M. N.	810 Times Building, St. Louis.
SPENCER, Selden P.	802 Commonwealth Trust Building, 421 Olive Street, St. Louis.

NEBRASKA :

HASTINGS, W. G.	c/o G. E. Stechert & Co., 2 Star Yard, Carey Street, W.C.
UNIVERSITY OF NEBRASKA	c/o Grevel & Co., 33 King Street, Covent Garden, W.C.

NEW HAMPSHIRE :

DARTMOUTH COLLEGE, HANOVER	c/o G. E. Stechert & Co., 2 Star Yard, Carey Street, W.C.
----------------------------	---

NEW JERSEY :

PRINCETON UNIVERSITY	Princeton.
----------------------	------------

NEW YORK :

ABBOT, Everett V.	45 Cedar Street, New York City.
ABBOTT, Nathan	515 West 124th Street, New York City.
ASHLEY, Clarence D.	New York University, New York City.
BELL, James D.	91 Rugby Road, Brooklyn.
†CHOATE, The Hon. Joseph H.	New York City.
DAVIES, J. T.	34 Nassau Street, New York City.
FLETCHER, Henry	214 Lincoln Place, Brooklyn.
GRAM, J. P.	Law Department, Mutual Life Insurance Co., 34 Nassau Street, New York City.
GULICK, John C.	132 Nassau Street, New York City.
KENNESON, T. D.	15 William Street, New York City.
LOEWY, Benno	206 Broadway, New York City.
MILBURN, J. G.	c/o B. F. Stevens & Brown, 4 Trafalgar Square, W.C.
MILLER, David H.	15 William Street, New York City.
QUINN, J.	31 Nassau Street, New York City.
VAUGHAN, Athelstan	185 Newtown Avenue, Astoria.
ASSOCIATION OF BAR OF NEW YORK	42 West 44th Street, New York City.
BROOKLYN LAW LIBRARY	c/o Alfred J. Hook, Librarian, County Court House, Brooklyn.
COLUMBIA UNIVERSITY LIBY.	
CORNELL UNIVERSITY LIBRARY	c/o E. G. Allen & Son, 14 Grape Street, Shaftesbury Avenue, W.C.
NEW YORK LAW INSTITUTE	c/o Stevens & Haynes, 13 Bell Yard, W.C.

NEW YORK—*cont.*

NEW YORK PUBLIC LIBRARY c/o B. F. Stevens & Brown, 4 Trafalgar Square, W.C.

NEW YORK UNIVERSITY LAW LIBRARY Washington Square East, New York City.

VASSAR COLLEGE LIBRARY Poughkeepsie, New York.

OHIO :

CINCINNATI LAW LIBRARY ASSOC. c/o Thornton M. Hinkle, Treasurer, Union Trust Building, Cincinnati.

DAYTON LAW LIBRARY

SCHMUCK, T. K. 1955 Madison Road, Cincinnati.

PENNSYLVANIA :

BROOKS, Wm. Gray Room 507, Franklin Bank Building, Philadelphia.

DEISER, Geo. F. 325-331 Chestnut Street, Philadelphia.

*GEST, John M. 425 City Hall, Philadelphia.

HIRST FREE LIBRARY 901 Drexel Building, Philadelphia.

JONES, James Collins 1531 North 15th Street, Philadelphia.

LINDSEY, E. S., LL.B. Warren.

ROBERTSON, Samuel G. Berger Building, Pittsburg.

SHAFFER, Hon. John D. Court of Common Pleas No. 2, Pittsburg.

SIMPSON, Alex., Jr. 5854 Drexel Road, Philadelphia.

THOMPSON, A. M. 727 Frick Building, Pittsburg

BIDDLE LAW LIBRARY Law Department of the University of Pennsylvania, Philadelphia.

BRYN MAWR COLLEGE LIBRARY c/o Australian Book Co., 16 Farrington Avenue, E.C.

LAW ASSOC. OF PHILADELPHIA Room 600, City Hall, Philadelphia.

LIBRARY CO. OF PHILADELPHIA c/o E. G. Allen & Son, 14 Grape Street, Shaftesbury Avenue, W.C.

LIBRARY OF UNIVERSITY OF PENNSYLVANIA c/o G. E. Stechert & Co., 2 Star Yard, Carey Street, W.C.

TEXAS :

LOCKE, Maurice E. Praetorian Building, Dallas.

UTAH :

RITER, W. D. 703 Utah Savings & Building Bank, Salt Lake City.

VERMONT :

HASELTON, Seneca Burlington.

MOULTON, Sherman R. 203 Main Street, Burlington.

WASHINGTON :

MCDANIELS, J. H. Ellensburg, Washington.

SHEPARD, Charles E. 613 New York Building, Seattle.

WISCONSIN :

LEHIGH UNIVERSITY	}	c/o H. Sotheran & Co., 140 Strand, W.C.
STATE HISTORICAL SOCIETY		
WISCONSIN STATE LIBRARY		
		c/o T. H. Flood & Co., 314 W. Madison Street, Chicago.

R U L E S

1. The Society shall be called the Selden Society.
2. The object of the Society shall be to encourage the study and advance the knowledge of the history of English Law, especially by the publication of original documents and the reprinting or editing of works of sufficient rarity or importance.
3. Membership of the Society shall be constituted by payment of the annual subscription, or, in the case of life members, of the composition. Form of application is given at the foot of page 281.
4. The annual subscription shall be £1. 1s., payable in advance on or before the 1st of January in every year. A composition of £21 shall constitute life membership from the date of the composition, and, in the case of Libraries, Societies, and corporate bodies, membership for 30 years.
5. The management of the affairs and funds of the Society shall be vested in a President, two Vice-Presidents, and a Council consisting of fifteen members, in addition to the *ex-officio* members. The President, the two Vice-Presidents, the Literary Director or Directors, the Secretary, and the Treasurer shall be *ex-officio* members. Three shall form a quorum.
6. The President, Vice-Presidents, and Members of the Council shall be elected for three years. At every Annual General Meeting such one of the President and Vice-Presidents as has, and such five members of the Council as have, served longest without re-election, shall retire.
7. The five vacancies in the Council shall be filled up at the Annual General Meeting in the following manner: (a) Any two Members of the Society may nominate for election any other member by a writing signed by them and the nominated member, and sent to the Secretary on or before the 14th of February. (b) Not less than fourteen days before the Annual General Meeting the Council shall nominate for election five members of the Society. (c) No person shall be eligible for election on the Council unless nominated under this Rule. (d) Any candidate may withdraw. (e) The names of the persons nominated shall be printed in the notice convening the Annual General Meeting. (f) If the persons nominated, and whose nomination shall not have been withdrawn, are not more than five, they shall at the Annual General Meeting be declared to have been elected. (g) If the persons nominated, and whose nomination shall not have been withdrawn, shall be more than five, an election shall take place by ballot as follows: every member of the Society present at the Meeting shall be entitled to vote by writing the names of not

more than five of the candidates on a piece of paper and delivering it to the Secretary or his Deputy, at such meeting, and the five candidates who shall have a majority of votes shall be declared elected. In case of equality the Chairman of the Meeting shall have a second or casting vote. The vacancy in the office of President or Vice-President shall be filled in the same manner (*mutatis mutandis*).

8. The Council may fill casual vacancies in the Council or in the offices of President and Vice-President. Persons so appointed shall hold office so long as those in whose place they shall be appointed would have held office. The Council shall also have power to appoint Honorary Members of the Society.

9. The Council shall meet at least twice a year, and not less than seven days' notice of any meeting shall be sent by post to every member of the Council.

10. The Council may appoint a Literary Director or Directors, a Secretary, a Treasurer, and such other officers as they shall from time to time think fit, to hold office during the pleasure of the Council; and may from time to time prescribe their respective duties; and may make any arrangements for the remuneration of any officer which they may from time to time think reasonable.

11. It shall be the duty of the Literary Director or Directors (but always subject to the control of the Council) to supervise the editing of the publications of the Society, to suggest suitable editors, and generally to advise the Council with respect to carrying the objects of the Society into effect.

12. Each member shall be entitled to one copy of every work published by the Society as for any year of his membership. No person other than an Honorary Member shall receive any such work until his subscription for the year as for which the same shall be published shall have been paid. Provided that any member may be supplied with any publications on such terms as the Council may from time to time determine.

13. The funds of the Society, including the vouchers or securities for any investments, shall be kept at a Bank, to be selected by the Council, in the name of the Society. Such funds or investments shall only be dealt with by a cheque or other authority signed by the Treasurer, and countersigned by one of the Vice-Presidents or such other person as the Council may from time to time appoint.

14. The accounts of the receipts and expenditure of the Society up to the 31st of December in each year shall be audited once a year by two Auditors, to be appointed by the Society, and the report of the Auditors, with an abstract of the accounts, shall be circulated together with the notice convening the Annual Meeting.

15. An Annual General Meeting of the Society shall be held in March 1896, and thereafter in the month of March in each year. The Council may upon their own resolution, and shall on the request in writing of not less than ten members, call a Special General Meeting. Seven days' notice at least, specifying the object of the meeting and the time and place at which it is to be held, shall be posted to every member resident in the United Kingdom at his last known address. No member shall vote at any General Meeting whose subscription is in arrear.

16. The Secretary shall keep a Minute Book wherein shall be entered a record of the transactions, as well at Meetings of the Council as at General Meetings of the Society.

17. These rules may upon proper notice be repealed, added to, or modified from time to time at any meeting of the Society. But such repeal, addition, or modification, if not unanimously agreed to, shall require the vote of not less than two-thirds of the members present and voting at such meeting.

March 1909.

FORM OF APPLICATION FOR MEMBERSHIP.

To the Secretary of the Selden Society.

I desire to become a member of the Society, and herewith send my cheque for One Guinea, the annual subscription [or £21 the life contribution] dating from the commencement of the present year. [I also desire to subscribe for the past publications (vols.), and I add £ to my cheque.]

Name.....

Address

Description

Date.....

[NOTE—Cheques, crossed “ROBARTS & Co., a/c of the Selden Society,” should be made payable to the Hon. Treasurer. Forms of bankers’ orders for payment of subscriptions direct to the Society’s banking account can be obtained from the Secretary or Hon. Treasurer.]

Subscriptions should be paid to the Honorary Treasurer, Mr. J. E. W. RIDER, 8 New Square, Lincoln’s Inn, London, W.C. or, in the United States of America, to the Local Honorary Secretary and Treasurer, Mr. RICHARD W. HALE, 16 Central Street, Boston, Massachusetts.

29.2.16

